

HOUSE BILL NO. 5272

October 26, 2023, Introduced by Reps. Witwer, Tyrone Carter, Glanville and Snyder and referred to the Committee on Government Operations.

A bill to require certain public officers to file annual financial disclosure reports; to create a financial disclosure form; to prescribe penalties and civil sanctions; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "public officers
2 financial disclosure act".

3 Sec. 3. As used in this act:

4 (a) "Blind trust" means a qualified blind trust or qualified

1 diversified trust as those terms are defined in 5 CFR 2634.403.

2 (b) "Department" means the department of state.

3 (c) "Earned income" means salaries, wages, tips, bonuses,
4 commissions, or other compensation or earnings from employment
5 earned during the reporting period.

6 (d) "Form" means the financial disclosure form created by the
7 department in accordance with section 11.

8 (e) "Gift" means that term as defined in section 7 of the
9 Michigan campaign finance act, 1976 PA 388, MCL 169.207.

10 (f) "Honorarium" means that term as defined in section 7 of
11 the Michigan campaign finance act, 1976 PA 388, MCL 169.207.

12 (g) "Liabilities" means what a person owes to another person,
13 including, but not limited to, mortgages or other debts. For
14 purposes of this act, a debt does not include a revolving debt, an
15 unsecured debt that is from a financial institution or the federal
16 government, or a debt owed by a business entity.

17 (h) "Lobbyist" means that term as defined in section 5 of 1978
18 PA 472, MCL 4.415.

19 (i) "Lobbyist agent" means that term as defined in section 5
20 of 1978 PA 472, MCL 4.415.

21 (j) "Spouse" means an individual who is lawfully married to a
22 public officer as described under 26 CFR 30.7701-18.

23 (k) "Public officer" means all of the following:

24 (i) A state representative.

25 (ii) A state senator.

26 (iii) The attorney general.

27 (iv) The governor.

28 (v) The lieutenant governor.

29 (vi) The secretary of state.

1 (l) "Report" means the financial disclosure report required
2 under section 10 of article IV of the state constitution of 1963.

3 (m) "Reporting period" means the preceding calendar year.

4 (n) "Unearned income" means income that is not earned from
5 employment, including, but not limited to, financial prize,
6 unemployment benefits, annuities, stock dividends, deferred
7 compensation, pension, profit sharing, or retirement income.
8 Unearned income does not include inheritance money or a familial
9 gift.

10 Sec. 5. (1) A public officer shall file an annual financial
11 disclosure report with the department.

12 (2) The report required under this section must first be filed
13 by April 15, 2024, and by May 15 of each year thereafter. This
14 subsection does not apply to an individual who was a public officer
15 only on the first day of the calendar year.

16 (3) If a public officer who is required to file a report under
17 this act receives notice from the secretary of state under section
18 13(1)(g), the public officer shall, within 9 business days after
19 receiving the notice, file corrections to the errors or omissions
20 or file the report, as applicable.

21 Sec. 7. (1) A report required under section 5 must include a
22 complete statement of all of the following:

23 (a) The full name, mailing address, telephone number, and
24 email address of the public officer.

25 (b) The name and address of the public officer's employer and
26 the positions held during the reporting period, if the public
27 officer receives \$1,000.00 or more in annual income from each
28 position.

29 (c) The name of the spouse of the public officer and the

1 occupation of the public officer's spouse.

2 (d) A list of all positions currently held as an officer,
3 director, trustee, partner, proprietor, representative, employee,
4 or consultant of any organization, corporation, firm, partnership,
5 or other business enterprise, nonprofit organization, labor
6 organization, or educational or other institution other than this
7 state. If this subdivision applies, the public officer shall
8 include the name of the organization. For purposes of this
9 subdivision, positions held in any religious, social, fraternal, or
10 political entity, or positions that are solely of an honorary
11 nature, are excluded.

12 (e) The source of earned income received during the reporting
13 period by the public officer. For purposes of this subdivision, the
14 public officer must report each source of income received during
15 the reporting period that is \$1,000.00 or more.

16 (f) Except as otherwise provided in this subdivision, a list
17 of each asset, excluding a business asset, held for investment or
18 production of income with a fair market value of \$1,000.00 or more
19 during the reporting period and any sources of unearned income that
20 exceed \$200.00 during the reporting period. The fair market value
21 for the purpose of listing each asset, excluding a business asset,
22 held for investment or production of income under this subdivision
23 must be adjusted for inflation every 4 years using the Detroit
24 Consumer Price Index, and rounded up to the nearest \$1,000.00.

25 (g) A list of all liabilities that exceed \$10,000.00 owed by
26 the public officer to a creditor at any time during the reporting
27 period.

28 (h) Except as otherwise provided in this subdivision, a list
29 of any stocks, bonds, or other forms of securities held by the

1 public officer or held jointly with the public officer's spouse
2 during the reporting period, if the security has a total aggregate
3 fair market value of \$1,000.00 or more. The fair market value for
4 the purpose of listing stocks, bonds, or other forms of securities
5 under this subdivision must be adjusted for inflation every 4 years
6 using the Detroit Consumer Price Index, and rounded up to the
7 nearest \$1,000.00. For purposes of this act, a public officer is
8 not required to disclose a stock in a widely held investment fund,
9 including, but not limited to, a mutual fund, regulated investment
10 company, pension or deferred compensation plan, or other investment
11 fund, if both of the following apply:

12 (i) Either the fund is publicly traded or the assets of the
13 fund are widely diversified.

14 (ii) The public officer or the public officer's spouse does not
15 exercise control over or have the ability to exercise control over
16 the financial interests held by the fund.

17 (i) A list of any real property in which the public officer
18 holds an ownership or other financial interest. For purposes of
19 this subdivision, the public officer is required to include a real
20 property in the report only if that real property has a fair market
21 value of \$1,000.00 or more during the reporting period. A public
22 officer filing a report may exclude the street number of a parcel
23 of real property under this subdivision.

24 (j) The date, identity of parties to, and general terms of any
25 agreements or arrangements with respect to future employment, a
26 leave of absence while serving as a public officer, continuation or
27 deferral of payments by a former or current employer other than
28 this state, or continuing participation in an employee welfare or
29 benefit plan maintained by a former employer.

1 (k) A list of all gifts received and reported by a lobbyist or
2 lobbyist agent under state law.

3 (l) A list of all travel payments received and reported by a
4 lobbyist or lobbyist agent under state law.

5 (m) A list of each payment made by a lobbyist or lobbyist
6 agent to a charity in lieu of honoraria.

7 (2) A public officer is not required to disclose the value of
8 any real property or property disclosed under subsection (1).

9 (3) If a public officer required to file a report under this
10 section holds a beneficial interest in a blind trust, the public
11 officer is not required to include the interests or assets of the
12 blind trust in the report. However, the public officer must
13 indicate in the public officer's report that the public officer
14 holds a beneficial interest in a blind trust. For purposes of this
15 subsection, beneficial includes, but is not limited to, the
16 interest in a trust of a qualified trust beneficiary or trust
17 beneficiary as those terms are defined under section 7103 of the
18 estates and protected individuals code, 1998 PA 386, MCL 700.7103.

19 (4) A report required under section 5 must include the
20 following certification: "I certify that the statements I have made
21 on this financial disclosure form are true, complete, and correct
22 to the best of my knowledge and belief, and that I have not moved
23 assets during the reporting period for the purpose of avoiding
24 disclosure under the public officers financial disclosure act".

25 Sec. 9. A public officer filing a report under section 5 may
26 omit any of the following:

27 (a) Information an individual is required to report under the
28 Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

29 (b) An item otherwise required to be reported under section

1 7(1) (h) or (i) if all of the following apply:

2 (i) The item represents the exclusive financial interest and
3 responsibility of the public officer's spouse about which the
4 public officer does not have control.

5 (ii) The item is not in any way derived from the income,
6 assets, or activities of the public officer.

7 (iii) The public officer does not derive, or expect to derive,
8 financial benefit from the item.

9 (c) An item that concerns a spouse who is living separate and
10 apart from the public officer with the intention of terminating the
11 marriage or maintaining a legal separation.

12 (d) An item that concerns income of the public officer arising
13 from dissolution of the public officer's marriage or a permanent
14 legal separation from the public officer's spouse.

15 Sec. 11. (1) Within 30 days after the effective date of this
16 act, the department shall create a standard financial disclosure
17 form that incorporates the requirements of section 7 for use by a
18 public officer to file the financial disclosure report required
19 under this act.

20 (2) The department shall make the form easily accessible on
21 its website within 30 days after creating the form.

22 Sec. 13. (1) The secretary of state shall do all of the
23 following:

24 (a) Make available through the secretary of state's offices
25 appropriate forms, instructions, and manuals required by this act.

26 (b) Create and operate an electronic, internet-accessible
27 system to receive all statements and reports required by this act
28 to be filed with the secretary of state.

29 (c) Create all forms, instructions, and manuals required under

1 this act.

2 (d) Issue declaratory rulings to implement this act under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328.

5 (e) On receiving a written request and the required filing,
6 waive payment of a late filing fee if the request for the waiver is
7 based on good cause and accompanied by adequate documentation. One
8 or more of the following reasons constitute good cause for a late
9 filing fee waiver:

10 (i) The incapacitating physical illness, hospitalization,
11 accident involvement, death, or incapacitation for medical reasons
12 of a public officer or an individual whose participation is
13 essential to the preparation of the report.

14 (ii) Other unique, unintentional factors beyond the control of
15 the public officer that are not the result of a negligent act or
16 nonaction so that a reasonably prudent person would excuse the
17 filing on a temporary basis. These factors include the loss or
18 unavailability of records because of a fire, flood, theft, or
19 similar reason and difficulties related to the transmission of the
20 filing to the secretary of state, such as exceptionally bad
21 weather.

22 (f) As soon as practicable, but not later than 5 business days
23 after a report required to be filed under this act is received,
24 make the report or all of the contents of the report available
25 without charge to the public on a separate internet webpage or its
26 website homepage.

27 (g) Within 9 business days after the deadline for filing a
28 report under this act, notify, by registered mail or email, an
29 individual of any error or omission in the individual's report or

1 that the individual failed to file the required report.

2 (2) The secretary of state shall issue a declaratory ruling
3 under this section only if the person requesting the ruling has
4 provided a reasonably complete statement of facts necessary for the
5 ruling or if the person requesting the ruling has, with the
6 permission of the secretary of state, supplied supplemental facts
7 necessary for the ruling. Within 2 days after receiving a request
8 for a declaratory ruling, the secretary of state shall make the
9 request available in the manner provided for under subsection
10 (1)(f). An interested person may submit written comments regarding
11 the request to the secretary of state within 10 business days after
12 the date the request is made available to the public. Within 45
13 business days after receiving a declaratory ruling request, the
14 secretary of state shall make a proposed response available in the
15 manner provided for under subsection (1)(f). An interested person
16 may submit written comments regarding the proposed response to the
17 secretary of state within 5 business days after the date the
18 proposal is made available to the public. Except as otherwise
19 provided in this section, the secretary of state shall issue a
20 declaratory ruling within 60 business days after receiving a
21 request for a declaratory ruling. If the secretary of state refuses
22 to issue a declaratory ruling, the secretary of state shall notify
23 the person making the request of the reasons for the refusal and
24 issue an interpretative statement providing an informational
25 response to the question presented within the 60-day period. A
26 declaratory ruling or interpretative statement issued under this
27 section must not state a general rule of law, other than that which
28 is stated in this act, or under judicial order.

29 (3) Under extenuating circumstances, the secretary of state

1 may issue a notice extending, for not more than 30 business days,
2 the period during which the secretary of state shall respond to a
3 request for a declaratory ruling. The secretary of state shall not
4 issue more than 1 notice of extension for a particular request. A
5 person requesting a declaratory ruling may waive, in writing, the
6 time limitations provided by this section.

7 (4) The secretary of state shall make available to the public
8 an annual summary of the declaratory rulings and interpretative
9 statements issued by the secretary of state under this section.

10 (5) A person may file with the secretary of state a complaint
11 that alleges a violation of this act. Within 5 business days after
12 a complaint that meets the requirements of subsection (6) is filed,
13 the secretary of state shall mail notice to the person against whom
14 the complaint is filed. The notice must include a copy of the
15 complaint. Within 15 business days after the notice is mailed, the
16 person against whom the complaint was filed may submit a response
17 to the secretary of state. The secretary of state may extend the
18 period for submitting a response an additional 15 business days for
19 good cause. The secretary of state shall mail a copy of a response
20 received to the complainant. Within 10 business days after the
21 response is mailed, the complainant may submit a rebuttal statement
22 to the secretary of state. The secretary of state may extend the
23 period for submitting a rebuttal statement an additional 10
24 business days for good cause. The secretary of state shall provide
25 a copy of the rebuttal statement to the person against whom the
26 complaint was filed.

27 (6) A complaint filed under subsection (5) must satisfy all of
28 the following requirements:

29 (a) Be signed by the complainant.

1 (b) State the name, address, and telephone number of the
2 complainant.

3 (c) Include the complainant's certification that, to the best
4 of the complainant's knowledge, information, and belief, formed
5 after a reasonable inquiry under the circumstances, each factual
6 contention of the complaint is supported by evidence. However, if,
7 after a reasonable inquiry under the circumstances, the complainant
8 is unable to certify that certain factual contentions are supported
9 by evidence, the complainant may certify that, to the best of the
10 complainant's knowledge, information, or belief, there are grounds
11 to conclude that those specifically identified factual contentions
12 are likely to be supported by evidence after a reasonable
13 opportunity for further inquiry.

14 (7) A person shall not file a complaint with a false
15 certificate under subsection (6)(c). A person may file a complaint
16 under subsection (5) alleging that another person has filed a
17 complaint with a false certificate under subsection (6)(c).

18 (8) The secretary of state shall investigate allegations
19 brought under this act. If an allegation involves the secretary of
20 state, or the secretary of state's spouse, the secretary of state
21 shall refer the matter to the attorney general to determine whether
22 a violation of this act occurred.

23 (9) No later than 45 business days after receiving a rebuttal
24 statement submitted under subsection (5) or, if no response or
25 rebuttal is received under subsection (5), 45 business days after
26 receiving a complaint under subsection (5), the secretary of state
27 shall post on the secretary of state's website whether there may be
28 reason to believe that a violation of this act occurred. If the
29 secretary of state determines there may be reason to believe that a

1 violation of this act occurred or determines to terminate its
2 proceedings, the secretary of state shall, within 30 days after
3 that determination, post on the secretary of state's website any
4 complaint, response, or rebuttal statement received under
5 subsection (5) regarding that violation or alleged violation and
6 any correspondence that is dispositive of that violation or alleged
7 violation between the secretary of state and the complainant or the
8 person against whom the complaint was filed. If the secretary of
9 state determines that there may be reason to believe that a
10 violation of this act occurred, the secretary of state shall
11 endeavor to correct the violation or prevent a further violation by
12 using informal methods such as a conference, conciliation, or
13 persuasion, and may enter into a conciliation agreement with the
14 person involved. Unless violated, a conciliation agreement is a
15 complete bar to any further civil action with respect to matters
16 covered in the conciliation agreement. The secretary of state
17 shall, within 30 days after a conciliation agreement is signed,
18 post that agreement on the department's website. If, after 90
19 business days, the secretary of state is unable to correct or
20 prevent further violation by these informal methods, the secretary
21 of state may commence a hearing as provided in subsection (10) for
22 enforcement of this act.

23 (10) The secretary of state may commence a hearing to
24 determine whether a violation of this act occurred. The hearing
25 must be conducted in accordance with chapter 4 of the
26 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
27 24.288.

28 (11) A final decision or order issued by the secretary of
29 state under this act is subject to judicial review as provided

1 under chapter 6 of the administrative procedures act of 1969, 1969
2 PA 306, MCL 24.301 to 24.306. The secretary of state shall deposit
3 a civil fine imposed under this act in the general fund. The
4 secretary of state may bring an action in circuit court to recover
5 the amount of a civil fine.

6 (12) The secretary of state shall review a report or statement
7 filed under this act and may investigate an apparent violation of
8 this act. If the secretary of state determines that there may be
9 reason to believe a violation of this act occurred and the
10 procedures prescribed in subsection (9) have been complied with,
11 the secretary of state may commence a hearing under subsection (10)
12 to determine whether a violation of this act occurred.

13 (13) There is no private right of action, either in law or in
14 equity, under this act. The remedies provided in this act are the
15 exclusive means by which this act may be enforced and by which any
16 harm resulting from a violation of this act may be redressed.

17 (14) The secretary of state shall preserve a report filed
18 under this act for 15 years after the date the report is filed. If
19 the secretary of state or attorney general determines under this
20 section that a violation of this act occurred, the secretary of
21 state shall preserve all complaints, orders, decisions, or other
22 documents related to that violation for 15 years after the date of
23 the determination or the date the violation is corrected, whichever
24 is later. Reports filed under this act may be reproduced under the
25 records reproduction act, 1992 PA 116, MCL 24.401 to 24.406. After
26 the required preservation period, the reports, or the reproductions
27 of the reports, may be disposed of in the manner prescribed in the
28 management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, and
29 section 11 of the Michigan history center act, 2016 PA 470, MCL

1 399.811.

2 Sec. 15. (1) An individual who fails to file a report as
3 required under this act shall pay a late filing fee of \$25.00 for
4 each business day after the first 10 business days that the report
5 remains unfiled. The fee imposed under this subsection must not
6 exceed \$500.00.

7 (2) A late filing fee collected under this act must be
8 deposited into the general fund.

9 (3) An individual who knowingly files an incomplete or
10 inaccurate report in violation of this act may be ordered to pay a
11 civil fine of not more than \$1,000.00.

12 Enacting section 1. This act does not take effect unless
13 Senate Bill No. ____ or House Bill No. 5273 (request no. 04733'23)
14 of the 102nd Legislature is enacted into law.