

Section 4 Prior to the effective date of this Act, the Board of Ethics shall promulgate the forms required by this Act in accordance with the Administrative Procedure Act.

Section 5. This Act shall become effective on January 1, 2009; however, R.S. 42:1124.3 as enacted by this Act shall become effective on January 1, 2010. Any reference to R.S. 42:1124.3 as enacted by this Act shall have no effect until R.S. 42:1124.3 becomes effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law [R.S. 1:13(B)] and do not constitute proof or indicia of legislative intent. [R.S. 24:177(E)]

Tucker

HB No. 1

Abstract: Requires certain public servants to disclose certain income, compensation, and financial transactions of the public servant or his spouse and additionally requires candidates for certain offices to file financial disclosure statements with the Board of Ethics.

Present law (R.S. 42:1114.1) requires each member of the legislature to file an annual report with the clerical officer of the house to which he belongs by July 1 of each year of his term of office.

Present law provides the following:

- (1) Disclosure of any and all income exceeding \$250 which is received during the immediately preceding calendar year by such member, the spouse of such member, or any business enterprise in which such member and/or his spouse owns at least 10% and which is received from any of the following:
 - (a) The state or any political subdivision.
 - (b) Services performed for or in connection with a gaming interest as defined by the Campaign Finance Disclosure Act.
- (2) Authorizes legislators who receive Medicaid funds to indicate on the financial disclosure report that information relative to ownership, financial interest, and income derived therefrom may be accessed through files of record with the Dept. of Health and Hospitals, bureau of health standards.
- (3) Requires a certification that such member has filed his or her federal and state income tax returns or has filed for an extension of time for filing such tax returns.
- (4) Defines "income" as any remuneration received under any verbal or written contract of employment, fees received for professional services less expenses paid to third parties, and the net income, prior to taxation, received with respect to the sale or lease of immovable property, merchandise, or equipment. Excludes from "income" legislative remuneration, spouse's salary from full-time employment or salary as an elected official,

or any statewide public retirement system benefits.

- (5) Imposes penalties of \$100 per day, for failure to file, knowingly and wilfully failing to timely file, or knowingly and wilfully failing to disclose or accurately disclose any information required, for each day until the statement or required accurate information is filed. Additionally R.S. 42:1124.1 provides that whoever knowingly and wilfully files a false report shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned in parish prison for not more than six months, or both. Specifies that prosecutions shall be tried before a six-person jury, all of whom must concur to render a verdict.
- (6) Provides that failure to file, failure to timely file, failure to accurately report, or filing of false information constitutes contempt of the house to which the member belongs.

Proposed law removes the provisions of present law (R.S. 42:1114.1) and provides instead that members of the legislature file the financial disclosure reports as required by proposed law (R.S. 42:1124.2-see below).

Present law (R.S. 42:1124) requires that within 30 days after the date on which the governor enters upon the discharge of his duties as such, and annually thereafter, and within 30 days after the date on which the governor ceases to discharge the duties of his office, he shall file a financial statement on a form prescribed by the Board of Ethics.

Proposed law extends such reporting requirements to:

- (1) Statewide elected officials.
- (2) The secretaries of executive branch departments.
- (3) Each member of the Civil Service Commission and the director of state civil service.
- (4) The superintendent of education, the commissioner of higher education, and the president of each public postsecondary education system.
- (5) Each member of the State Board of Elementary and Secondary Education.
- (6) The executive secretary of the Public Service Commission.
- (7) The commissioner of administration.
- (8) The members of the Board of Ethics and the ethics administrator.

Proposed law provides that "public office" has the same meaning as present law (R.S. 18:1483-Election Code), namely, any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the office of president or vice president of the U.S.,

presidential elector, delegate to a political party convention, U.S. senator, U.S. congressman, or political party office. Provides that "judge" has the same meaning as provided in the Code of Judicial Conduct.

Present law requires that the financial statement include the following information for the preceding calendar year:

- (1) Full name and residence address of the individual who is required to file.
- (2) Full name of the individual's spouse, if any, and the spouse's occupation and principal business address.
- (3) Name, address, and nature of association with and the amount of interest in each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, or in which the individual or spouse, either individually or collectively, holds an interest worth in excess of 10%.
- (4) Name, address, type, and amount of each source of income, in excess of \$1,000, received by the individual or spouse, and the nature of the services rendered therefor, if any (except for income derived from mental health, medical health, or legal services rendered, the individual need only show the amount of the income and not the identity of any individual patient or client).
- (5) Brief description, location, and address of each parcel of real property, the fair market value of which exceeds \$2,000, in which the individual or spouse, either individually or collectively, has an interest.

Proposed law provides that no judge or law enforcement officer, including a district attorney, shall be required to disclose the address of his primary personal residence.

- (6) Brief description, amount, and date of any purchase, sale, exchange, donation, gift, or other acquisition or disposition, in excess of \$1,000, of any real property, and of any stocks, bonds, commodities futures, or other forms of securities, including but not limited to any option to acquire and/or dispose of any stocks, bonds, commodities futures, other forms of securities, negotiable instruments, movable or immovable property, or any other interest.

Proposed law replaces references in present law (see (5) and (6) above) to "real property" with references to "immovable property".

- (7) Name, address, and amount of each liability owed to any creditor by the individual or spouse which exceeds \$10,000, excluding any loan secured by a personal motor vehicle, household furniture, or appliances, if such loan does not exceed the purchase price of the item which secures it.

Proposed law additionally requires the name of any guarantor and the nature of each liability owed. Replaces specific reference to "personal motor vehicle, household furniture, or appliances" and "item" with "movable property".

Present law provides that when an amount is required to be disclosed, it shall be sufficient to report the amount by category of value as follows: (a) Category I, less than \$5,000; (b) Category II, \$5,000-\$24,999; (c) Category III, \$25,000-\$49,999; (d) Category IV, \$50,000-\$99,999; (e) Category V, \$100,000-\$199,999; and (f) Category VI, \$200,000 or more.

Proposed law additionally requires the following information to be disclosed:

- (1) The name of the employer, job title, and a brief description of each full-time or part-time employment position held by the individual or spouse.
- (2) A brief entity description of each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, or in which the individual or spouse, either individually or collectively, owns an interest which exceeds 10% of that business.
- (3) The name, address, type, and amount of each source of income received during the immediately preceding calendar year by the individual, the spouse of such individual, or any business in which such individual or spouse, either individually or collectively, owns an interest which exceeds 10% of that business, which is received from the state or any political subdivision as defined in Article VI of the Constitution of Louisiana.
- (4) The value assessed for property taxes of each parcel of real property in which the individual or spouse, either individually or collectively, has an interest, provided that the assessed value of the property exceeds \$2,000.

Proposed law provides that for income derived from professional or consulting services rendered, including mental health, medical health, or legal services, when the disclosure of the name or address of any source of income would be prohibited by law or by a professional code, the individual need only include the number of clients and amount of income for each of several listed applicable industry types.

Proposed law changes the date upon which the statement must be filed. Provides that the statement shall be filed by May 15 of each year during which the person holds an office or position covered by proposed law and by May 15 of the year following the termination of the holding of such office or position.

Proposed law (R.S. 42:1124.2) requires each legislator, judge, and person holding public office representing a voting district with a population of 5,000 or more (except those covered by R.S. 42:1124 above) to annually file a financial statement. Provides that the statement shall be filed by May 15 of each year during which the person holds an office or position covered by proposed law and by May 15 of the year following the termination of the holding of such office or position. Permits filing of the financial statement within 30 days after the individual files his federal tax

return for the year, provided that he notifies the Board of Ethics that he intends to do so within five days after the deadline.

Proposed law requires that the financial statements include the following information for the preceding calendar year:

- (1) The full name and residence address of the individual who is required to file.
- (2) The full name of the individual's spouse, if any, and the spouse's occupation and principal business address.
- (3) The name of the employer, job title, and a brief job description of each full-time or part-time employment position held by the individual or spouse.
- (4) The name, address, brief description of, and nature of association with and the amount of interest in each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, or in which the individual or spouse, either individually or collectively, owns an interest which exceeds 10%.
- (5) The name, address, type, and amount of each source of income received during the immediately preceding calendar year by the individual or spouse, or by any business in which the individual or spouse, either individually or collectively, owns an interest which exceeds 10% of that business, which is received from: (a) the state or any political subdivision, or (b) services performed for or in connection with a gaming interest as defined in the Campaign Finance Disclosure Act.
- (6) The name and address of any employer which provides income to the individual or spouse pursuant to the full-time or part-time employment of the individual or spouse, including a brief description of the nature of the services rendered pursuant to such employment and the amount of such income, excluding information required to be reported pursuant to Paragraph (5) above.
- (7) The name and address of all businesses which provide income to the individual or spouse, including a brief description of the nature of services rendered for each business or of the reason such income was received, and the aggregate amount of such income reported by category (see below), excluding information required to be reported pursuant to Paragraph (5) above.
- (8) A description of the type of any other income exceeding \$1,000 received by the individual or spouse, including a brief description of the nature of the services rendered for the income or the reason such income was received, and the amount of income reported by category pursuant to R.S. 42:1124.1(D)(1), excluding information required to be reported pursuant to R.S. 42:1124.2(C) (5)(a), (b), or (c).
- (9) A brief description, value assessed for property taxes, location, and address of each parcel

of immovable property in which the individual or spouse, either individually or collectively, has an interest, if the value assessed for property taxes for such parcel exceeds \$2,000. Provides that no judge or law enforcement officer, including a district attorney, shall be required to disclose the address of his primary personal residence.

- (10) The name and a brief description of each investment security having a value exceeding \$5,000 held by the individual or spouse, excluding mutual funds, education investment accounts, retirement investment accounts, government bonds, and cash or cash equivalent investments.
- (11) A brief description, amount, and date of any purchase or sale, in excess of \$5,000, of any immovable property and of any personally owned stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned stocks, bonds, or commodities futures.
- (12) The name and address of each creditor, and name of each guarantor, if any, to whom the individual or spouse owes any liability which exceeds \$10,000, excluding: (a) any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it, and (b) any liability, secured or unsecured, which is guaranteed by the individual or spouse for a business in which the individual or spouse owns any interest, provided that the liability is in the name of the business and, if the liability is a loan, that the individual or spouse does not use proceeds from the loan for personal use unrelated to the business.
- (13) A certification that such individual has filed his federal and state income tax returns, or has filed for an extension of time for filing such tax returns.

Proposed law provides that when an amount is authorized to be disclosed by category, it shall be sufficient to report the amount by the following categories: (a) Category I, less than \$5,000; (b) Category II, \$5,000-\$24,999; (c) Category III, \$25,000-\$49,999; (d) Category IV, \$50,000-\$100,000; (e) Category V, more than \$100,000. Provides that amounts required to be disclosed shall be valued at actual or fair market value, whichever is greater.

Proposed law requires that the financial statement be filed with the Board of Ethics with an affidavit certifying that the information contained in the financial statement is true and correct to the best of the filer's knowledge, information, and belief. Provides that the statement filed is a public record.

Proposed law prohibits an individual or spouse from transferring any asset, interest, or liability required to be disclosed to any person or business for the purpose of avoiding disclosure, unless such transfer is irrevocable. Provides that a transfer shall not be irrevocable if there exists any contract, letter, counter letter, note, or any other legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by an individual or spouse to a person or business to revert back to such individual or spouse.

Proposed law provides that "business" and "income" shall have the same meanings as provided in R.S. 42:1124 above, except that "income" for purposes of Paragraph (5) above shall not include expenses paid to third parties. Provides that "public office" has the same meaning as present law (R.S. 18:1483-Election Code), namely, any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the office of president or vice president of the U.S., presidential elector, delegate to a political party convention, U.S. senator, U.S. congressman, or political party office. Provides that "judge" has the same meaning as provided in the Code of Judicial Conduct.

Proposed law provides, relative to members of the legislature, that the Board of Ethics shall promptly notify the appropriate legislative clerical officer of violations of proposed law.

Present law (R.S. 42:1167) provides that all judges, as defined by the Code of Judicial Conduct, shall be governed exclusively by the provisions of the Code of Judicial Conduct, which shall be administered by the Judiciary Commission provided for in Article V, §25 of the Constitution of Louisiana.

Proposed law adds an exception to present law. Provides that R.S. 42:1124.2 and 1153 and any provisions of the Code of Governmental Ethics necessary to enforce R.S. 42:1124.2 and 1153 shall be applicable to judges.

Proposed law (R.S. 1124.3) provides that, except people required to file a financial statement under proposed law (R.S. 42:1124 and 1124.2-see above), each person holding public office who represents a voting district having a population of fewer than 5,000 and each appointed member of a state board or commission which has the authority to expend, disburse, or invest more than \$10,000 of funds in a fiscal year shall annually file a financial statement including the following information:

- (1) Any and all income exceeding \$250 received during the immediately preceding calendar year by the individual who is required to file, the spouse of such individual, or any business in which such individual or his spouse, individually or collectively, owns at least 10%, which is received from any of the following:
 - (a) The state or any political subdivision as defined in Article VI of the Constitution of Louisiana.
 - (b) Services performed for or in connection with a gaming interest as defined in R.S. 18:1505.2(L)(3)(a).
- (2) A certification that such individual has filed his federal and state income tax return, or has filed for an extension of time for filing such tax return.

Proposed law requires the statement to be filed on the same schedule as proposed law (R.S. 42:1124-see above). Provides that the terms "income", "business", and "public official" shall have the same meanings as provided in proposed law (R.S. 42:1124-see above). Provides that

"state board or commission" means a state board or commission included in the comprehensive computerized information system on boards, commissions, and like entities maintained by the legislative auditor pursuant to R.S. 24:513.2(D).

Present law (R.S. 42:1124.1) provides for penalties of \$500 per day (for governor) for failure to file, knowingly and wilfully failing to timely file, or knowingly and wilfully failing to disclose or accurately disclose any information required, for each day until the statement or required accurate information is filed. Present law additionally provides for penalties of \$100 per day (for legislators) for failure to file, knowingly and wilfully failing to timely file, or knowingly and wilfully failing to disclose or accurately disclose any information required, for each day until the statement required under present law (R.S. 42:1114.1) or required accurate information is filed.

Proposed law provides civil penalties as follows for failure to file, knowingly and wilfully failing to timely file, or knowingly and wilfully failing to disclose or accurately disclose relative to the indicated statements:

- (1) \$500 for statements required by R.S. 42:1124 to be filed by the governor.
- (2) \$100 per day for statements required by R.S. 42:1114 and for statements required by R.S. 42:1124 to be filed by persons other than the governor and for statements required by R.S. 42:1124.2 (legislators, judges, officials from districts of 5,000 or more population).
- (3) \$50 for statements required by R.S. 42:1124.3 (others required to file).

Proposed law provides that if the board discovers that a person has failed to file a statement or failed to disclose or accurately disclose information required by proposed law (R.S. 42:1124, 1124.2, or 1124.3), the staff of the board shall mail by certified mail a notice of delinquency informing the person that the statement must be filed or the information disclosed or accurately disclosed no later than 14 days after receipt of the notice of delinquency. Provides that the notice of delinquency shall include the deadline for filing the statement or disclosing or accurately disclosing the information. Provides that if the person files the statement or discloses or accurately discloses the information within 14 days after the mailing of the notice of delinquency, no penalties shall be assessed against the person.

Provides that whoever fails to file the statement or fails to disclose or accurately disclose the information required by proposed law (R.S. 42:1124, 1124.2, or 1124.3) by the deadline included in the notice of delinquency shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned in parish prison for not more than six months, or both. Provides that any prosecution under this Subsection shall be tried before a jury of six persons, all of whom must concur to render a verdict.

Proposed law retains present law but excludes violations of R.S. 1124, 1124.2, or 1124.3, present law (R.S. 42:1124.1) that provides that whoever knowingly and wilfully files a false report under the ethics code shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned in parish prison for not more than six months, or both, and specifies that prosecutions shall be tried before a six-person jury, all of whom must

concur to render a verdict.

Proposed law provides that a person who becomes a candidate shall file a financial disclosure statement as required by proposed law (R.S. 1124, 1124.2, and 1124.3-see above) for the office for which he is a candidate. Provides that if he is undecided as to the office he will seek, he shall file the statement required by R.S. 42:1124. Provides that the statement shall be filed within 30 days of the day the person becomes a candidate. Provides that if the person is required by proposed law (R.S. 1124, 1124.2, and 1124.3) to file a statement for the office for which he is a candidate, such filing shall satisfy the requirements of proposed law.

Proposed law applies similar procedures for enforcement and penalties for failing to file or failing to timely file a statement and for failing to disclose or accurately disclose information required by proposed law (R.S. 1124, 1124.2, and 1124.3-see above).

Proposed law repeals present law (R.S. 18:463(B)-Election Code) requiring a candidate for governor to file a financial disclosure statement upon filing the notice of candidacy and imposing specified penalties for failing to file, failing to timely file, and failing to disclose or accurately disclose required information.

Proposed law requires the board, prior to the effective date of the Act, to promulgate the required forms in accordance with the Administrative Procedure Act.

Proposed law becomes effective on Jan. 1, 2009, except that R.S. 42:1124.2 (relative to elected officials in districts with a population less than 5,000 and state boards and commission members) becomes effective on Jan. 1, 2010. Provides that any reference to R.S. 42:1124.2 shall have no effect until R.S. 42:1124.2 becomes effective.

(Amends R.S. 42:1124, 1124.1, 1157(A)(4)(a), and 1167; Adds R.S. 18:1495.7 and R.S. 42:1124.2 and 1124.3; Repeals R.S. 18:463(B) and R.S. 42:1114.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill.

1. Removes specific provisions requiring candidates for governor to file financial disclosure statements upon filing of the notice of candidacy and imposing specified penalties.
2. Provides procedures for each candidate for public office to file an appropriate financial statement upon becoming a candidate. Imposes penalties and provides procedures for enforcement.
3. Relative to the reporting of liabilities, additionally requires the name of any guarantor and the nature of each liability owed. Excludes certain liabilities secured by movable

property.

4. Relative to reporting of property and certain transactions, changes references from "real property" to "immovable property".
5. Specifically provides that no judge or law enforcement officer shall be required to disclose the address of his primary personal residence.
6. Relative to legislators, removes reference in ethics code that filing violations constitute contempt of the house to which the member belongs.
7. Relative to reporting of income derived from professional and consulting services, adds specific reference to mental health.
8. Relative to failing to file, failing to timely file, and failing to disclose or accurately disclose required information on financial statements, replaces late filing fees with specified penalties and enforcement procedures.

House Floor Amendments to the engrossed bill.

1. Removes legislators, judges, and elected officials from districts with a population of 5,000 or more from disclosure requirements applicable to the governor and provides separate disclosure requirements applicable to them. Retains provisions making disclosure requirements applicable to the governor also applicable to statewide elected officials.
2. Provides civil penalties for failure to file, knowingly and wilfully failing to timely file, or knowingly and wilfully failing to disclose or accurately disclose: \$100 per day for statements required by R.S. 42:1114 and for statements required by R.S. 42:1124 to be filed by persons other than the governor and for statements required by R.S. 42:1124.2 (legislators, judges, and officials from districts of 5,000 or more population), and \$50 for statements required by R.S. 42:1124.3 (others required to file). Retains \$500 penalty amount for the governor.
3. Provides that no penalties (instead of a civil penalty of \$500) shall be assessed if a person discloses or accurately discloses within 14 days of receipt of a notice of delinquency.
4. Removes provision for the board to forward findings relative to filing a false report to the district attorney of East Baton Rouge Parish.