

2015 Regular Session

HOUSE BILL NO. 294

BY REPRESENTATIVE STUART BISHOP

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUDGES: Requires personal financial disclosure by judges and justices of the peace

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AN ACT

To enact Chapter 1-D of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 13:65 through 67, relative to personal financial disclosure statements for judges and justices of the peace; to require all elected judges and justices of the peace to file an annual financial statement with the office of the judicial administrator for the Louisiana Supreme Court; to provide relative to requirements and procedures for reporting; to provide for reporting forms; to provide for a website with access to filed financial disclosure reports and those persons who failed to comply with requirements; to provide for definitions; to provide for the issuance of notice of delinquencies; to provide for requirements and procedures for noncompliance with reporting requirements; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 1-D of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:65 through 67, is hereby enacted to read as follows:

CHAPTER 1-D. JUDICIAL FINANCIAL DISCLOSURES

§65. Personal financial disclosure statements; judges

A.(1) All elected judges and justices of the peace shall annually file a financial statement as provided for in this Section. The financial statement shall be

1 filed by May fifteenth of each year during the term of office held by the judge and
2 by May fifteenth of the year following the expiration of the term of office.

3 (2) The financial statement shall be filed with the office of the judicial
4 administrator for the Louisiana Supreme Court, and shall be accompanied by the
5 affidavit of the individual filing it certifying that the information contained in the
6 financial statement is true and correct to the best of his knowledge, information, and
7 belief. The financial statement shall be a matter of public record and shall be subject
8 to public inspection and copying.

9 B. The financial statement may be filed within thirty days after the individual
10 files his federal tax return for the year on which he is reporting, taking into
11 consideration any extensions filed by the individual, provided that the individual
12 notifies the office of the judicial administrator, in writing prior to the deadline
13 provided for by Subsection A of this Section, of his intention to file for an extension.

14 C. The financial statement shall be filed on a form prescribed by the office
15 of the judicial administrator and approved by the supreme court, and shall include
16 the following information for the preceding calendar year:

17 (1) The full name and office address of the individual who is required to file.

18 (2) The full name of the individual's spouse, if any, and the spouse's
19 occupation and principal business address.

20 (3) The name of the employer, job title, and a brief job description of each
21 full-time or part-time employment position held by the individual and spouse.

22 (4)(a) The name, address, brief description of, the nature of association with,
23 and the amount of interest in each business in which the individual or spouse is a
24 director, officer, owner, partner, member, or trustee, and in which the individual or
25 spouse, either individually or collectively, owns an interest which exceeds ten
26 percent of that business.

27 (b) The name, address, brief description of, and nature of association with
28 a nonprofit organization in which the individual or spouse is a director or officer.

1 (5)(a)(i) The name, address, type, and amount of each source of income
2 received by the individual or spouse, or by any business in which the individual or
3 spouse, either individually or collectively, owns an interest which exceeds ten
4 percent of that business, which is received from any of the following:

5 (aa) The state or any political subdivision as defined in Article VI of the
6 Constitution of Louisiana.

7 (bb) Services performed for or in connection with a gaming interest as
8 defined in R.S. 18:1505.2(L)(3)(a).

9 (ii) Notwithstanding the provisions of Subsection D of this Section, amounts
10 reported pursuant to Subparagraph (a) of this Paragraph shall be reported by specific
11 amount rather than by category of value.

12 (b) The name and address of any employer which provides income to the
13 individual or spouse pursuant to the full-time or part-time employment of the
14 individual or spouse, including a brief description of the nature of the services
15 rendered pursuant to such employment and the amount of such income, excluding
16 information required to be reported pursuant to Subparagraph (a) of this Paragraph.

17 (c) The name and address of all businesses which provide income to the
18 individual or spouse, including a brief description of the nature of services rendered
19 for each business or of the reason such income was received, and the aggregate
20 amount of such income, excluding information required to be reported pursuant to
21 Subparagraph (a) or (b) of this Paragraph.

22 (d) A description of the type of any other income, exceeding one thousand
23 dollars received by the individual or spouse, including a brief description of the
24 nature of the services rendered for the income or the reason such income was
25 received, and the amount of income, excluding information required to be reported
26 pursuant to Subparagraph (a), (b), or (c) of this Paragraph.

27 (6) A brief description, fair market value or use value as determined by the
28 assessor for purposes of ad valorem taxes, and the location by state and parish or
29 county of each parcel of immovable property in which the individual or spouse,

1 either individually or collectively, has an interest, provided that the fair market value
2 or use value as determined by the assessor for purposes of ad valorem taxes for such
3 parcel of immovable property exceeds two thousand dollars.

4 (7) The name and a brief description of each investment security having a
5 value exceeding five thousand dollars held by the individual or spouse, excluding
6 variable annuities, variable life insurance, variable universal life insurance, whole
7 life insurance, any other life insurance product, mutual funds, education investment
8 accounts, retirement investment accounts, including state retirement plans, deferred
9 retirement option plan (DROP) accounts, 401K retirement accounts, individual
10 retirement accounts (IRAs) and deferred compensation accounts, government bonds,
11 and cash or cash equivalent investments. The provisions of this Paragraph shall not
12 be deemed to require disclosure of information concerning any property held and
13 administered for any person other than the individual or spouse under a trust,
14 tutorship, curatorship, or other custodial instrument.

15 (8) A brief description, amount, and date of any purchase or sale by the
16 individual or spouse, in excess of five thousand dollars, of any immovable property
17 and of any personally owned tax credit certificates, stocks, bonds, or commodities
18 futures, including any option to acquire or dispose of any immovable property or of
19 any personally owned tax credit certificates, stocks, bonds, or commodities futures.
20 The provisions of this Paragraph shall not be deemed to require disclosure of
21 information concerning variable annuities, variable life insurance, variable universal
22 life insurance, whole life insurance, any other life insurance product, mutual funds,
23 education investment accounts, retirement investment accounts, including state
24 retirement plans, deferred retirement option plan (DROP) accounts, 401K retirement
25 accounts, individual retirement accounts (IRAs) and deferred compensation
26 accounts, government bonds, cash, or cash equivalent investments.

27 (9) The name and address of each creditor, and name of each guarantor, if
28 any, to whom the individual or spouse owes any liability which exceeds ten thousand
29 dollars on the last day of the reporting period excluding:

1 (a) Any loan secured by movable property, if such loan does not exceed the
2 purchase price of the movable property which secures it.

3 (b) Any liability, secured or unsecured, which is guaranteed by the individual
4 or spouse for a business in which the individual or spouse owns any interest,
5 provided that the liability is in the name of the business and, if the liability is a loan,
6 that the individual or spouse does not use proceeds from the loan for personal use
7 unrelated to the business.

8 (c) Any loan by a licensed financial institution which loans money in the
9 ordinary course of business.

10 (d) Any liability resulting from a consumer credit transaction as defined in
11 R.S. 9:3516(13).

12 (e) Any loan from an immediate family member, unless such family member
13 is a registered lobbyist, or his principal or employer is a registered lobbyist, or he
14 employs or is a principal of a registered lobbyist, or unless such family member has
15 a contract with the state.

16 (10) A certification that such individual has filed his federal and state income
17 tax returns, or has filed for an extension of time for filing such tax returns.

18 D. When an amount is required to be disclosed pursuant to this Section, it
19 shall be sufficient to report the amount by the following categories:

20 (1) Category I, less than \$5,000.

21 (2) Category II, \$5,000-\$24,999.

22 (3) Category III, \$25,000-\$100,000.

23 (4) Category IV, more than \$100,000.

24 E. To enhance the public's ability to gather information easily regarding the
25 conduct of the judiciary, the office of the judicial administrator shall maintain a
26 website which allows the public to quickly and easily review disclosure reports filed
27 with the office of the judicial administrator.

28 F.(1) For purposes of this Section, an individual or spouse shall not transfer
29 any asset, interest, or liability required to be disclosed pursuant to this Section to any

1 person or business for the purpose of avoiding disclosure, unless such transfer is
2 irrevocable. A transfer shall not be irrevocable if there exists any contract, letter,
3 counter letter, note, or any other legally enforceable agreement or authority which
4 if exercised or enforced would require or authorize any asset, interest, or liability
5 transferred by an individual or spouse to a person or business to revert back to such
6 individual or spouse.

7 (2)(a) The sale of property subject to owner financing shall not be a transfer
8 prohibited by Paragraph (1) of this Subsection provided that the income from the sale
9 is disclosed in accordance with the provisions of this Section.

10 (b) A recorded bond for deed contract shall not be a transfer prohibited by
11 Paragraph (1) of this Subsection.

12 G. For purposes of this Chapter, the following words shall have the
13 following meanings:

14 (1) "Business" means any corporation, limited liability company,
15 partnership, sole proprietorship, firm, enterprise, franchise, association, business,
16 organization, self-employed individual, holding company, trust, or any other legal
17 entity or person.

18 (2)(a) "Income for a business" shall mean gross income less both of the
19 following:

20 (i) Costs of goods sold.

21 (ii) Operating expenses.

22 (b) "Income for an individual" shall mean taxable income and shall not
23 include any income received pursuant to a life insurance policy. Notwithstanding
24 the foregoing, the gross amount of an individual's judicial salary shall be reported.

25 (3) "Individual or person" shall include any judge and justice of the peace
26 that is required to file the financial statement as required by this Chapter.

27 H. Nothing in this Section shall require the disclosure or reporting of income
28 derived from child support and alimony payments contained in a court order or from

1 the reporting or disclosure of income derived from disability payments from any
2 source.

3 §66. Penalties; personal financial disclosure statements; notice of delinquency

4 A.(1) If a person fails to timely file a financial statement as required by R.S.
5 13:65 or omits any information required to be included in the statement, or if the
6 office of the judicial administrator has reason to believe information included in the
7 statement is inaccurate, the office of judicial administrator shall notify the person of
8 such failure, omission, or inaccuracy by sending a notice of delinquency by certified
9 mail, immediately upon discovery of the failure, omission, or inaccuracy.

10 (2) The notice of delinquency shall inform the person that the financial
11 statement must be filed, or that the information must be disclosed or accurately
12 disclosed, or that a written answer contesting the allegation of such a failure,
13 omission, or inaccuracy must be filed no later than fourteen business days after
14 receipt of the notice of delinquency. The notice shall include the deadline for filing
15 the statement, filing the answer, or disclosing or accurately disclosing the
16 information.

17 (3) The office of the judicial administrator shall inform the person in the
18 notice of delinquency that failure to file the statement, to disclose or accurately
19 disclose the information, or to file an answer contesting the allegation by the
20 deadline shall result in the imposition of penalties as provided in Subsection F of this
21 Section.

22 B.(1) If the person fails to file the statement, fails to provide the omitted
23 information, fails to correct the inaccurate information, or fails to file a written
24 answer prior to the deadline contained in the notice of delinquency, the office of the
25 judicial administrator shall refer the matter to the commission.

26 (2) If the individual files a written answer contesting the allegations
27 contained in the notice of delinquency, or if a complaint is received by the office of
28 the judicial administrator after a financial statement has been filed that is directed to

1 the accuracy or completeness of a particular statement, the matter shall be referred
2 to the commission.

3 (3) In the event a written complaint is received by the commission after a
4 financial statement has been filed that is directed to the accuracy or completeness of
5 a statement, and the complaint is not deemed by the commission to be frivolous, the
6 commission shall mail the complaint by certified mail to the person who is the
7 subject of the complaint. The person shall be asked to answer the complaint within
8 fourteen business days after receipt of the complaint.

9 C. Upon a finding by the commission in connection with a written answer
10 that no violation has occurred, no penalties shall be assessed against the person.

11 D. If the commission determines in connection with a written answer that the
12 person may have failed to file the statement or failed to disclose or accurately
13 disclose the required information, the matter shall be the subject of a hearing to be
14 convened in accordance with Subsection E of this Section.

15 E.(1) In the event a matter pertaining to financial disclosure is referred to the
16 commission, and the commission finds that the person may have failed to file a
17 financial statement, or failed to disclose or accurately disclose the required
18 information, the commission may order that a hearing be conducted before a hearing
19 officer designated by the court pursuant to the rules of the supreme court. A hearing
20 officer shall be selected for the hearing in accordance with the rules of the supreme
21 court. The office of special counsel shall file an itemized cost statement with the
22 commission in any case in which the commission convenes a hearing.

23 (2) The procedures for convening and conducting the hearing shall be in
24 accordance with the rules of the supreme court.

25 (3) The hearing will be limited to the following issues:

26 (i) whether or not the individual failed to file a financial statement;

27 (ii) whether or not the individual failed to disclose or accurately disclose the
28 required information; and

1 (iii) whether the failure was willful and knowing. For purposes of this
2 Section, "willful and knowing" means conduct involving bad faith, dishonest motive,
3 or a purposeful choice not to file the financial disclosure statement in order to obtain
4 some personal or professional gain including but not limited to a desire not to
5 disclose one's personal assets to the public, or the desire not to take the time, trouble,
6 and effort to complete the form with the knowledge that it is required to be filed by
7 a certain date.

8 (4) Within fifteen days after the conclusion of the hearing, the hearing officer
9 shall submit a report to the commission that contains proposed findings of fact and
10 conclusions of law, if applicable. No recommendation shall be made by the hearing
11 officer as to the issues to be considered by the commission or the court pursuant to
12 Paragraph (3) of this Subsection.

13 (5) In the event the commission decides that no violation has occurred, the
14 commission shall issue a written determination to that effect. In that event, no
15 penalties shall be assessed against the person, and no recommendation shall be made
16 to the supreme court.

17 (6) If the commission determines that the person has failed to file a
18 statement, or failed to disclose or accurately disclose the required information, the
19 commission shall file the record and a recommendation with the supreme court. The
20 commission shall recommend the imposition of civil penalties and costs in
21 accordance with Paragraph (7) of this Subsection and shall also make a
22 recommendation as to whether the violation was willful and knowing.

23 (7) The court shall assign the case for argument summarily in accordance
24 with the rules of the supreme court. Judgment shall be rendered promptly following
25 argument. If the court determines that no violation has occurred, no penalty shall be
26 assessed. In the event the supreme court determines that a violation has occurred,
27 the court shall assess civil penalties in the following amounts:

28 (a) One hundred dollars per day, for statements required by R.S. 13:65.

1 (b) All or a portion of the costs incurred by the office of special counsel and
2 the commission, in the court's discretion.

3 (8) If a person filed a written answer contesting the allegations prior to the
4 deadline contained in the notice of delinquency, or prior to the deadline for filing an
5 answer to a complaint, penalties shall be assessed from the date the commission
6 recommended the imposition of civil penalties.

7 (9) A finding by the court that a person has willfully and knowingly failed
8 to file a statement, willfully and knowingly failed to timely file a statement, willfully
9 and knowingly omitted information from a statement, or willfully and knowingly
10 provided inaccurate information in a statement shall subject the individual to
11 prosecution for a misdemeanor. The court shall forward its findings to the district
12 attorney for the parish where the person who filed the report for appropriate action
13 is domiciled.

14 F.(1) The office of the judicial administrator shall post on its website, which
15 shall be available for viewing on the internet, a list of all individuals who have failed
16 to file, or failed to timely file, or failed to provide omitted information, or failed to
17 provide accurate information as required by this Section.

18 (2)(a) No person shall be included on the list referenced in Paragraph (1)
19 unless he or she fails to file, to provide omitted information, or to provide accurate
20 information by the deadline included in the notice of delinquency, nor shall he be
21 included on the list if he has filed an answer or an answer contesting the allegations
22 included in the notice of delinquency.

23 (b) A person shall be removed from the list within two business days after
24 filing the statement or accurately disclosing the required information.

25 G. If a person who is required to disclose information required by R.S.
26 13:65, discovers an error or inaccuracy in the information disclosed and files an
27 amendment to such disclosure correcting such error or inaccuracy prior to the receipt
28 of a notice of delinquency, no penalties shall be assessed against the person, and the

1 the judicial administrator shall supplement the initial disclosure with the amendment
2 thereto in the official records of the office of the judicial administrator.

3 H. The following shall be matters of public record and open to the public:

4 (1) All financial statements filed pursuant to this Section.

5 (2) Any notice of delinquency and any referral by the office of the judicial
6 administrator to the commission, pursuant to this Section.

7 (3) Any pleadings that are filed following a referral to the commission.

8 (4) Any hearing conducted pursuant to this Section.

9 (5) Any findings of fact, conclusions of law, and report authored by a
10 hearing officer.

11 (6) Any recommendation or determination made by the commission
12 following a referral by the office of the judicial administrator.

13 §67. Judges

14 All judges and justices of the peace, as defined by the Code of Judicial
15 Conduct, shall be governed exclusively by the provisions of the Code of Judicial
16 Conduct, which shall be administered by the Judiciary Commission as provided for
17 in Article V, Section 25 of the Constitution of Louisiana, except that R.S. 13:65 and
18 66, and any other provisions of this Chapter shall be applicable to judges.

19 Section 2. All requirements as provided for in this Act regarding the obligations of
20 judges and justices of the peace shall take effect on January 1, 2016, which shall include the
21 submission and posting of financial disclosure statements that are due to the court by May
22 15, 2016. All existing financial disclosure statements currently on file with the supreme
23 court shall be made available for viewing on the website by January 1, 2016.

24 Section 3. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 effective on the day following such approval.

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 or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 294 Original

2015 Regular Session

Stuart Bishop

Abstract: Requires the filing of financial disclosure statements for all judges and justices of the peace and provides relative to the related procedures, requirements, and penalties.

Proposed law requires all elected judges and justices of the peace to file a financial statement by May 15th of each year during their terms of office and the year following the expiration of the term with the judicial administrator for the La. Supreme Court.

Proposed law further provides that the statement may be filed within 30 days after filing individual tax returns unless there is an extension filed by the judge and notification given to the judicial administrator of his intent to file for an extension.

Proposed law requires all judges and justices of the peace to disclose certain information of certain values by category for the judge and his spouse as it relates to sources of income, immovable property, investment securities, movable property, and liabilities, both secured and unsecured, and provides that all financial statements shall be a matter of public record.

Proposed law requires certification that the judge or justice of the peace has filed his federal and state income tax returns or filed for an extension of time to file.

Proposed law requires the judicial administrator to maintain a website which allows public access for review of filed disclosure reports and the list of those persons who fail to file a statement, fail to timely file a statement, omits information from a statement, or provides inaccurate information in a statement.

Proposed law prohibits the sale or transfer of property for purposes of avoiding disclosure requirements provided for in proposed law.

Proposed law provides for definitions.

Proposed law excludes from reporting requirements provided for in proposed law, reporting income derived from child support and alimony payments by court order or disability payments from any source.

Proposed law requires the judicial administrator to notify any judge or justice of the peace by a notice of delinquency for failure to timely file, omission of certain information, or inaccurate information as it relates to the financial statement and further provides for related procedures.

Proposed law requires the judicial administrator to refer all noncompliant matters and written complaints regarding the financial statement to the Judiciary Commission for determination of a violation and penalties and to make a recommendation to the supreme court regarding the imposition of civil penalties and costs and whether the violation was willful and knowing.

Proposed law provides for the procedures for the supreme court to determine if a violation has occurred and requires the assessment of civil penalties.

Proposed law requires the supreme court to forward any findings where a person knowingly and willfully fails to file a statement, fails to timely file a statement, omits information from a statement, or provides inaccurate information in a statement to the district attorney for the parish where the person is domiciled for prosecution of a misdemeanor.

Proposed law requires that certain proceedings of the supreme court be a matter of public record.

Authorizes judges to be governed by proposed law rather than the code of judicial conduct as it relates to financial disclosure statements.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 13:65-67)