

First Extraordinary Session, 2008

HOUSE BILL NO. 3

BY REPRESENTATIVES TUCKER, PETERSON, GALLOT, BARROW, BILLIOT, TIM BURNS, CAZAYOUX, CONNICK, DOERGE, DOVE, HENRY, LABRUZZO, LIGI, PEARSON, PUGH, RICHARD, SMILEY, JANE SMITH, TALBOT, AND WILLIAMS

ETHICS/FINANCIAL DISCLOS: Requires judges and candidates for judge to disclose certain financial information (Item #1)

1 AN ACT

2 To amend and reenact R.S. 42:1124.1, 1157(A)(4)(a), and 1167 and to enact R.S. 18:1495.7  
3 and R.S. 42:1124.2, relative to financial disclosure; to require certain disclosures by  
4 judges; to require certain disclosures by candidates for judge; to provide for the  
5 content of such disclosures; to provide for certain actions by the Board of Ethics  
6 relative to such disclosures; to provide relative to the application of certain  
7 provisions of the Code of Governmental Ethics; to provide for penalties; to provide  
8 relative to effectiveness; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 18:1495.7 is hereby enacted to read as follows:

11 §1495.7. Financial disclosure statements

12 A. Any person who becomes a candidate for judge shall file a financial  
13 disclosure statement as required by R.S. 42:1124.2. The statement required by this  
14 Section shall be filed within thirty days of the day a person becomes a candidate. If  
15 the person is required by R.S. 42:1124.2 to file a statement for the office for which  
16 he is a candidate, such filing shall satisfy the requirements of this Section.

17 B.(1)(a) If the staff of the board discovers that a person has failed to file a  
18 statement or failed to disclose or accurately disclose information required by R.S.

1        42:1124.2, the staff of the board shall mail by certified mail a notice of delinquency  
2        informing the person that the statement must be filed or the information disclosed or  
3        accurately disclosed no later than fourteen days after receipt of the notice of  
4        delinquency. The notice of delinquency shall include the deadline for filing the  
5        statement or disclosing or accurately disclosing the information. If the person files  
6        the statement or discloses or accurately discloses the information within fourteen  
7        days after the mailing of the notice of delinquency, a civil penalty of five hundred  
8        dollars shall be assessed against the person.

9            (b) Whoever fails to file the statement or fails to disclose or accurately  
10        disclose the information required by R.S. 42:1124.2 by the deadline included in the  
11        notice of delinquency shall be guilty of a misdemeanor and upon conviction thereof  
12        shall be fined not less than one thousand dollars nor more than ten thousand dollars  
13        or imprisoned in parish prison for not more than six months, or both. The board shall  
14        forward a copy of its findings of such violation to the district attorney of the Parish  
15        of East Baton Rouge for appropriate action. Any prosecution under this Subsection  
16        shall be tried before a jury of six persons, all of whom must concur to render a  
17        verdict.

18            (2) Whoever fails to timely file a statement or fails to disclose or accurately  
19        disclose information required by R.S. 42:1124.2, but files the statement or accurately  
20        discloses the information prior to the staff mailing a notice of delinquency, shall be  
21        assessed a civil penalty of five hundred dollars.

22            C. Whoever knowingly and willfully files a false report required by this Part  
23        shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less  
24        than one thousand dollars nor more than ten thousand dollars or imprisoned in parish  
25        prison for not more than six months, or both. The board shall forward a copy of its  
26        findings of such violation to the district attorney of the Parish of East Baton Rouge  
27        for appropriate action. Any prosecution under this Subsection shall be tried before  
28        a jury of six persons, all of whom must concur to render a verdict.

1           D. "Knowingly and willfully", for purposes of this Section, means conduct  
2           which could have been avoided through the exercise of due diligence.

3           Section 2. R.S. 42:1124.1, 1157(A)(4)(a), and 1167 are hereby amended and  
4 reenacted and R.S. 42:1124.2 is hereby enacted to read as follows:

5           §1124.1. Penalties; required reports; failure to file; timely and accurate filing

6           A.(1) Whoever fails to file a financial statement required by ~~this Part~~ R.S.  
7           42:1114, or knowingly and willfully fails to timely file any such statement, or  
8           knowingly and willfully fails to disclose or to accurately disclose any information  
9           required by ~~this Part~~ R.S. 42:1114 shall be assessed a civil penalty pursuant to R.S.  
10           42:1157 for each day until such statement or the required accurate information is  
11           filed.

12           (2) The amount of such penalty shall be: one hundred dollars per day.

13           ~~(a) Five hundred dollars per day for statements required by R.S.~~  
14           ~~42:1124.~~

15           ~~(b) One hundred dollars per day for statements required by R.S. 42:1114 or~~  
16           ~~1114.1.~~

17           B.(1)(a) If the staff of the board discovers that a person has failed to file a  
18           statement or failed to disclose or accurately disclose information required by R.S.  
19           42:1124.2, the staff of the board shall mail by certified mail a notice of delinquency  
20           informing the person that the statement must be filed or the information disclosed or  
21           accurately disclosed no later than fourteen days after receipt of the notice of  
22           delinquency. The notice of delinquency shall include the deadline for filing the  
23           statement or disclosing or accurately disclosing the information. If the person files  
24           the statement or discloses or accurately discloses the information within fourteen  
25           days after the mailing of the notice of delinquency, a civil penalty of five hundred  
26           dollars shall be assessed against the person.

27           (b) Whoever fails to file the statement or fails to disclose or accurately  
28           disclose the information required by R.S. 42:1124.2 by the deadline included in the  
29           notice of delinquency shall be guilty of a misdemeanor and upon conviction thereof

1 shall be fined not less than one thousand dollars nor more than ten thousand dollars  
2 or imprisoned in parish prison for not more than six months, or both. The board shall  
3 forward a copy of its findings of such violation to the district attorney of the Parish  
4 of East Baton Rouge for appropriate action. Any prosecution under this Subsection  
5 shall be tried before a jury of six persons, all of whom must concur to render a  
6 verdict.

7 (2) Whoever fails to timely file a statement or fails to disclose or accurately  
8 disclose information required by R.S. 42:1124.2, but files the statement or accurately  
9 discloses the information prior to the staff mailing a notice of delinquency, shall be  
10 assessed a civil penalty of five hundred dollars.

11 C. Whoever knowingly and willfully files a false report required by this Part  
12 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less  
13 than one thousand dollars nor more than ten thousand dollars or imprisoned in parish  
14 prison for not more than six months, or both. The board shall forward a copy of its  
15 findings of such violation to the district attorney of the Parish of East Baton Rouge  
16 for appropriate action. Any prosecution under this Subsection shall be tried before  
17 a jury of six persons, all of whom must concur to render a verdict.

18 €: D. "Knowingly and willfully", for purposes of this Section, means  
19 conduct which could have been avoided through the exercise of due diligence.

20 §1124.2. Financial disclosure; judges

21 A. Each judge shall annually file a financial statement as provided in this  
22 Section.

23 B. The financial statement required by this Section shall be filed by May 15  
24 of each year during which the person holds an office or position included in  
25 Subsection A of this Section and by May 15 of the year following the termination of  
26 the holding of such office or position.

27 C. The financial statement required by this Section shall be filed on a form  
28 prescribed by the Board of Ethics and shall include the following information for the  
29 preceding calendar year:

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

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

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

7           (4) The name, address, brief entity description of, and nature of association  
8           with and the amount of interest in each business in which the individual or spouse  
9           is a director, officer, owner, partner, member, or trustee, or in which the individual  
10          or spouse, either individually or collectively, owns an interest which exceeds ten  
11          percent of that business.

12          (5) The name, address, type, and amount of each source of income received  
13          during the immediately preceding calendar year by the individual or spouse, or by  
14          any business in which the individual or spouse, either individually or collectively,  
15          owns an interest which exceeds ten percent of that business, which is received from  
16          the state or any political subdivision as defined in Article VI of the Constitution of  
17          Louisiana.

18          (6) The name, address, type, and amount of each source of income, in excess  
19          of one thousand dollars, received by the individual or spouse, and the nature of the  
20          services rendered therefor, if any, not already disclosed under Paragraph (5) of this  
21          Subsection. For income derived from professional or consulting services rendered,  
22          including mental health, medical health, or legal services, when the disclosure of the  
23          name or address of any source of income would be prohibited by law or by a  
24          professional code, the individual need only include the number of clients and amount  
25          of income for each of the following applicable industry types:

26                 (a) Utilities:

27                         (i) Electric.

28                         (ii) Gas.

29                         (iii) Telephone.

- 1                    (iv) Water.
- 2                    (v) Cable television companies.
- 3                    (b) Transportation:
- 4                    (i) Intrastate companies.
- 5                    (ii) Pipeline companies.
- 6                    (iii) Oil exploration.
- 7                    (iv) Gas exploration.
- 8                    (v) Oil and gas retailers.
- 9                    (c) Finance and insurance:
- 10                   (i) Banks.
- 11                   (ii) Savings and loan associations.
- 12                   (iii) Loan and/or finance companies.
- 13                   (iv) Manufacturing firms.
- 14                   (v) Mining companies.
- 15                   (vi) Life insurance companies.
- 16                   (vii) Casualty insurance companies.
- 17                   (viii) Other insurance companies.
- 18                   (d) Retail companies:
- 19                   (i) Beer companies.
- 20                   (ii) Wine companies.
- 21                   (iii) Liquor companies.
- 22                   (iv) Beverage distributors.
- 23                   (e) Associations:
- 24                   (i) Trade.
- 25                   (ii) Professional.
- 26                   (f) Other (specify).
- 27                   (7) A brief description, value assessed for property taxes, location, and
- 28                   address of each parcel of immovable property in which the individual or spouse,
- 29                   either individually or collectively, has an interest, provided that the value assessed

1 for property taxes for such parcel of immovable property exceeds two thousand  
2 dollars. However, no judge shall be required to disclose the address of his primary  
3 personal residence.

4 (8) A brief description, amount, and date of any purchase, sale, exchange,  
5 donation, gift, or other acquisition or disposition, in excess of one thousand dollars,  
6 of any immovable property, and of any stocks, bonds, commodities futures, or other  
7 forms of securities, including but not limited to any option to acquire or dispose of  
8 any stocks, bonds, commodities futures, other forms of securities, negotiable  
9 instruments, movable or immovable property, or any other interest.

10 (9) The name, address, amount, name of guarantor, if any, and nature of each  
11 liability owed to any creditor by the individual or spouse which exceeds ten thousand  
12 dollars, excluding any loan secured by movable property, if such loan does not  
13 exceed the purchase price of the movable property which secures it.

14 D.(1) When an amount is required to be disclosed pursuant to this Section,  
15 it shall be sufficient to report the amount by category of value. The categories shall  
16 be:

17 (a) Category I, less than \$5,000.

18 (b) Category II, \$5,000-\$24,999.

19 (c) Category III, \$25,000-\$49,999.

20 (d) Category IV, \$50,000-\$99,999.

21 (e) Category V, \$100,000-\$199,999.

22 (f) Category VI, \$200,000 or more.

23 (2) Amounts required to be disclosed shall be valued at actual or fair market  
24 value, whichever is greater.

25 E. The financial statement shall be filed with the Board of Ethics and shall  
26 be accompanied by the affidavit of the individual filing it certifying that the  
27 information contained in the financial statement is true and correct to the best of his  
28 knowledge, information, and belief. The financial statement shall be a public record,

1 subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes  
2 of 1950.

3 F. For the purposes of this Section, an individual or spouse shall not transfer  
4 any asset, interest, or liability required to be disclosed pursuant to Subsection B of  
5 this Section to any person or business for the purpose of avoiding disclosure, unless  
6 such transfer is irrevocable. A transfer shall not be irrevocable if there exists any  
7 contract, letter, counter letter, note, or any other legally enforceable agreement or  
8 authority which if exercised or enforced would require or authorize any asset,  
9 interest, or liability transferred by an individual or spouse to a person or business to  
10 revert back to such individual or spouse.

11 G. For purposes of this Section, the following words shall have the following  
12 meanings:

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

16 (2) "Income" means any income from whatever source derived, including but  
17 not limited to the following items: compensation for services, including fees,  
18 salaries, commissions, and similar items; income derived from business; gains  
19 derived from dealings in property; interest; rents; royalties; dividends; annuities;  
20 income from life insurance and endowment contracts; pensions; income from  
21 discharge of indebtedness; distributive share of partnership income; and income from  
22 interest in an estate or trust.

23 (3) "Judge" shall have the same meaning as provided in the Code of Judicial  
24 Conduct.

25 H. The Board of Ethics shall post a list of all persons who have failed to file  
26 or failed to timely file, or who have failed to disclose or accurately disclose any  
27 information required by this Section. A person shall be removed from the list upon  
28 filing or accurately disclosing the required information.

29 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1157. Late filing fees

2 A.

3 \* \* \*

4 (4)(a)(i) The late filing fees for any violation of R.S. 42:1114,~~1114.1~~, and  
5 ~~1124~~ shall be as provided in R.S. 42:1124.1(A).

6 (ii) The late penalties for any violation of R.S. 42:1124.2 shall be as  
7 provided in R.S. 42:1124.1(B).

8 \* \* \*

9 §1167. Judges

10 All judges, as defined by the Code of Judicial Conduct, shall be governed  
11 exclusively by the provisions of the Code of Judicial Conduct, which shall be  
12 administered by the Judiciary Commission provided for in Article V, Section 25 of  
13 the Constitution of Louisiana, except that R.S. 42:1124.1, 1124.2, 1153, 1157, and  
14 any provisions of this Chapter necessary to enforce R.S. 42:1124, 1124.1, 1124.2,  
15 1153, and 1157 shall be applicable to judges.

16 Section 3. Prior to the effective date of this Act, the Board of Ethics shall promulgate  
17 the forms required by this Act in accordance with the Administrative Procedure Act.

18 Section 4. This Act shall become effective on January 1, 2009.

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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)]

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Tucker

HB No. 3

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

Proposed law requires judges to annually file a financial statement with the Board of Ethics disclosing:

- (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 entity 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% of that business.
- (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 the state or any political subdivision as defined in Article VI of the Constitution of La.
- (6) The 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, not already disclosed under Paragraph (5) above. 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 certain enumerated applicable industry types.
- (7) 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, provided that the value assessed for property taxes for such parcel of immovable property exceeds \$2,000. Provides that no judge shall be required to disclose the address of his primary personal residence.
- (8) A brief description, amount, and date of any purchase, sale, exchange, donation, gift, or other acquisition or disposition, in excess of \$1,000, of any immovable property, and of any stocks, bonds, commodities futures, or other forms of securities, including but not limited to any option to acquire or dispose of any stocks, bonds, commodities futures, other forms of securities, negotiable instruments, movable or immovable property, or any other interest.
- (9) The name, address, amount, name of any guarantor, and the nature of each liability owed to any creditor by the individual or spouse which exceeds \$10,000, excluding any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it.

Proposed law provides that when an amount is required to be disclosed pursuant to this Section, it shall be sufficient to report the amount by the following categories:

- (1) Category I, less than \$5,000.
- (2) Category II, \$5,000-\$24,999.
- (3) Category III, \$25,000-\$49,999.
- (4) Category IV, \$50,000-\$99,999.
- (5) Category V, \$100,000-\$199,999.
- (6) Category VI, \$200,000 or more.

Proposed law provides that the financial statement shall be accompanied by the affidavit of the individual filing it certifying that the information contained in the financial statement is true and correct to the best of his knowledge, information, and belief. Provides that the financial statement shall be a public record, subject to the provisions of Chapter 1 of Title 44 of the LRS of 1950.

Proposed law provides that an individual or spouse shall not transfer 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 defines "business" as any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person. Defines "income" as any income from whatever source derived, including but not limited to the following items: compensation for services, including fees, salaries, commissions, and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from interest in an estate or trust. Provides that "judge" shall have the same meaning as provided in the Code of Judicial Conduct.

Proposed law requires the Board of Ethics shall post a list of all persons who have failed to file or failed to timely file, or who have failed to disclose or accurately disclose any information required by this Section. Provides that a person shall be removed from the list upon filing or accurately disclosing the required information.

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 to be in a financial statement, 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 to be in a financial statement, for each day until the statement required under present law (R.S. 42:1114.1) or required accurate information is filed. Present law (R.S. 42:1124.1) additionally 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.

Proposed law retains present law penalties of \$100 per day for statements required by present law (R.S. 42:1114).

Proposed law provides that if the staff of 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. 42:1124.2), 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, a civil penalty of \$500 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. 42:1124.2) 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 the board shall forward a copy of its findings to the district attorney of the Parish of East Baton Rouge for appropriate action. 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.

Provides whoever fails to timely file a statement or fails to disclose or accurately disclose information required by proposed law (R.S. 42:1124.2), but files the statement or accurately discloses the information prior to the staff mailing a notice of delinquency, shall be assessed a civil penalty of \$500.

Provides that whoever knowingly and willfully files a false report required by proposed law 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. Requires the board to forward a copy of its findings to the district attorney of the Parish of East Baton Rouge for appropriate action. Requires any prosecution under proposed law to be tried before a jury of six persons, all of whom must concur to render a verdict. Provides that "knowingly and willfully" means conduct which could have been avoided through the exercise of due diligence.

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, Section 25 of the Constitution of La.

Proposed law adds an exception to present law. Provides that R.S. 42:1124.1, 1124.2, 1153, and 1157 and any provisions of the Code of Governmental Ethics necessary to enforce R.S. 42:1124.1, 1124.2, 1153, and 1157 shall be applicable to judges.

Proposed law provides that a person who becomes a candidate for judge shall file a financial disclosure statement as required by proposed law (R.S. 42:1124.2-see above). 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. 42:1124.2) 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. 42:1124.2-see above).

Effective Jan. 1, 2009.

(Amends R.S. 42:1124.1, 1157(A)(4)(a), and 1167; Adds R.S. 18:1495.7 and R.S. 42:1124.2)

**Summary of Amendments Adopted by House**

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

1. Removes proposed provisions requiring candidates for judge to file financial disclosure statements upon filing of the notice of candidacy and imposing specified penalties.
2. Provides procedures for each candidate for judge to file a 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 shall be required to disclose the address of his primary personal residence.
6. 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.