

HOUSE BILL 1404

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By: **Delegates Stewart, Acevero, Carr, Crutchfield, Ivey, Korman, Lopez, Palakovich Carr, Queen, Ruth, Shetty, Stein, and Terrasa**
Introduced and read first time: February 7, 2020
Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Public Ethics – Financial Disclosure – Requirements**
3 **(Conflicts of Interest Act)**

4 FOR the purpose of requiring the Governor to send a copy of a certain disclosure to the
5 presiding officers of the General Assembly and the State Ethics Commission;
6 requiring, beginning on a certain date, certain State officials to place certain
7 interests in a blind trust or divest certain assets or holdings for a certain purpose;
8 prohibiting a certain individual from appointing certain individuals as trustee of a
9 certain trust or receiving certain communications regarding the management of a
10 certain trust; requiring a financial disclosure statement of certain State officials to
11 include certain information; altering the types of interests attributable to a certain
12 individual filing a financial disclosure statement; and generally relating to financial
13 disclosures and public ethics.

14 BY repealing and reenacting, without amendments,
15 Article – General Provisions
16 Section 5–101(a) and (t) and 5–607(a)
17 Annotated Code of Maryland
18 (2019 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article – General Provisions
21 Section 5–501 and 5–608
22 Annotated Code of Maryland
23 (2019 Replacement Volume)

24 BY adding to
25 Article – General Provisions
26 Section 5–607(l)
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 (2019 Replacement Volume)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
3 That the Laws of Maryland read as follows:

4 **Article – General Provisions**

5 5–101.

6 (a) In this title the following words have the meanings indicated unless:

7 (1) the context clearly requires a different meaning; or

8 (2) a different definition is adopted for a particular provision.

9 (t) (1) “Interest” means a legal or equitable economic interest that is owned or
10 held wholly or partly, jointly or severally, or directly or indirectly, whether or not the
11 economic interest is subject to an encumbrance or condition.

12 (2) “Interest” does not include:

13 (i) an interest held in the capacity of agent, custodian, fiduciary,
14 personal representative, or trustee, unless the holder has an equitable interest in the
15 subject matter;

16 (ii) an interest in a time or demand deposit in a financial institution;

17 (iii) an interest in an insurance policy, endowment policy, or annuity
18 contract under which an insurer promises to pay a fixed amount of money in a lump sum
19 or periodically for life or a specified period;

20 (iv) a common trust fund or a trust that forms part of a pension or a
21 profit-sharing plan that:

22 1. has more than 25 participants; and

23 2. is determined by the Internal Revenue Service to be a
24 qualified trust under the Internal Revenue Code or a qualified tuition plan established
25 pursuant to Section 529 of the Internal Revenue Code; or

26 (v) a mutual fund or exchange-traded fund that is publicly traded
27 on a national scale unless the mutual fund or exchange-traded fund is composed primarily
28 of holdings of stocks and interests in a specific sector or area that is regulated by the
29 individual’s governmental unit.

30 5–501.

1 (a) Except as otherwise provided in subsection (c) of this section, an official or
2 employee may not participate in a matter if:

3 (1) the official or employee or a qualifying relative of the official or
4 employee has an interest in the matter and the official or employee knows of the interest;
5 or

6 (2) any of the following is a party to the matter:

7 (i) a business entity in which the official or employee has a direct
8 financial interest of which the official or employee reasonably may be expected to know;

9 (ii) a business entity, including a limited liability company or a
10 limited liability partnership, of which any of the following is an officer, a director, a trustee,
11 a partner, or an employee:

12 1. the official or employee; or

13 2. if known to the official or employee, a qualifying relative
14 of the official or employee;

15 (iii) a business entity with which any of the following has applied for
16 a position, is negotiating employment, or has arranged prospective employment:

17 1. the official or employee; or

18 2. if known to the official or employee, a qualifying relative
19 of the official or employee;

20 (iv) if the contract reasonably could be expected to result in a conflict
21 between the private interest and the official State duties of the official or employee, a
22 business entity that is a party to a contract with:

23 1. the official or employee; or

24 2. if known to the official or employee, a qualifying relative
25 of the official or employee;

26 (v) a business entity, either engaged in a transaction with the State
27 or subject to regulation by the official's or employee's governmental unit, in which a direct
28 financial interest is owned by another business entity if the official or employee:

29 1. has a direct financial interest in the other business entity;

30 and

31 2. reasonably may be expected to know of both financial
32 interests; or

1 (vi) a business entity that:

2 1. the official or employee knows is a creditor or an obligee of
3 the official or employee, or of a qualifying relative of the official or employee, with respect
4 to a thing of economic value; and

5 2. as a creditor or an obligee, is in a position to affect directly
6 and substantially the interest of the official, employee, or qualifying relative.

7 (a-1) (1) This subsection does not apply to an individual who is a public official
8 only as a member of a board and who receives annual compensation that is less than 25%
9 of the lowest annual compensation at State grade level 16.

10 (2) A former regulated lobbyist who is or becomes subject to regulation
11 under this title as a public official or employee may not participate in a case, contract, or
12 other specific matter as a public official or employee for one calendar year after the
13 termination of the registration of the former regulated lobbyist if the former regulated
14 lobbyist previously assisted or represented another party for compensation in the matter.

15 (b) (1) The prohibitions of subsection (a) of this section do not apply if
16 participation is allowed:

17 (i) as to officials and employees subject to the authority of the Ethics
18 Commission, by regulation of the Ethics Commission;

19 (ii) by the opinion of an advisory body; or

20 (iii) by another provision of this subtitle.

21 (2) This section does not prohibit participation by an official or employee
22 that is limited to the exercise of an administrative or ministerial duty that does not affect
23 the decision or disposition with respect to the matter.

24 (c) (1) An official or employee who otherwise would be disqualified from
25 participation under subsection (a) of this section shall disclose the nature and
26 circumstances of the conflict, and may participate or act, if:

27 [(1)] (I) the disqualification would leave a body with less than a quorum
28 capable of acting;

29 [(2)] (II) the disqualified official or employee is required by law to act; or

30 [(3)] (III) the disqualified official or employee is the only individual
31 authorized to act.

32 (2) IF THE GOVERNOR IS REQUIRED TO MAKE A DISCLOSURE UNDER

1 PARAGRAPH (1) OF THIS SUBSECTION, THE GOVERNOR SHALL SEND A COPY OF THE
2 DISCLOSURE TO THE PRESIDING OFFICERS OF THE GENERAL ASSEMBLY AND THE
3 ETHICS COMMISSION.

4 (D) (1) THIS SUBSECTION APPLIES ONLY TO:

5 (I) THE GOVERNOR;

6 (II) THE LIEUTENANT GOVERNOR;

7 (III) THE ATTORNEY GENERAL; AND

8 (IV) THE COMPTROLLER.

9 (2) BEGINNING OCTOBER 1, 2022, BEFORE TAKING THE OATH OF
10 OFFICE, AN INDIVIDUAL SHALL:

11 (I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, PLACE
12 AN INTEREST IN A BUSINESS ENTITY, REAL PROPERTY, AND OTHER INVESTMENTS
13 INTO A BLIND TRUST THAT IS APPROVED BY THE ETHICS COMMISSION IN
14 ACCORDANCE WITH REGULATIONS ADOPTED UNDER SUBSECTION (B) OF THIS
15 SECTION OR § 5-502(C) OF THIS SUBTITLE AND THAT IS OPERATED IN COMPLIANCE
16 WITH THOSE REGULATIONS; OR

17 (II) DIVEST PRIVATE ASSETS AND HOLDINGS TO RESOLVE
18 LIKELY OR POTENTIAL CONFLICTS OF INTEREST WITH THE INDIVIDUAL'S PUBLIC
19 DUTIES, AS DETERMINED BY THE ETHICS COMMISSION.

20 (3) (I) IF AN INDIVIDUAL ESTABLISHES A BLIND TRUST UNDER
21 PARAGRAPH (2)(I) OF THIS SUBSECTION, THE INDIVIDUAL MAY NOT:

22 1. APPOINT THE SPOUSE, AN ADULT CHILD, A
23 DEPENDENT CHILD, A PARENT, OR A SIBLING OF THE INDIVIDUAL AS TRUSTEE OF
24 THE TRUST; AND

25 2. RECEIVE COMMUNICATIONS FROM THE TRUSTEES
26 REGARDING MANAGEMENT OF OR INCOME FROM THE TRUST AS A TRUSTOR OR
27 BENEFICIARY OF THE TRUST AT ANY TIME DURING THE INDIVIDUAL'S TERM OF
28 OFFICE.

29 (II) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT APPLY TO
30 AN INDIVIDUAL'S HOME.

1 5-607.

2 (a) A statement that is required under § 5-601(a) of this subtitle shall contain
3 schedules disclosing the information and interests specified in this section, if known, for
4 the individual making the statement for the applicable period.

5 **(L) TO THE EXTENT NOT REPORTED UNDER SUBSECTIONS (A) THROUGH (J)**
6 **OF THIS SECTION, A STATEMENT FILED BY THE GOVERNOR, LIEUTENANT**
7 **GOVERNOR, ATTORNEY GENERAL, OR COMPTROLLER SHALL INCLUDE:**

8 **(1) EACH SOURCE, NOT INCLUDING THE INDIVIDUAL'S GOVERNMENT**
9 **SALARY, FROM WHICH THE INDIVIDUAL RECEIVED EARNED INCOME OR UNEARNED**
10 **INCOME AT ANY TIME DURING THE APPLICABLE PERIOD; AND**

11 **(2) IF THE INDIVIDUAL HOLDS A 10% OR GREATER INTEREST IN A**
12 **FOR-PROFIT BUSINESS ENTITY AT ANY TIME DURING THE APPLICABLE PERIOD:**

13 **(I) THE NAME OF EACH INDIVIDUAL WHO HOLDS A 10% OR**
14 **GREATER INTEREST IN THE SAME BUSINESS ENTITY AS THE REPORTING**
15 **INDIVIDUAL; AND**

16 **(II) IF THE INTEREST IS NOT HELD IN A BLIND TRUST OR HAS**
17 **NOT BEEN DIVESTED:**

18 **1. THE NAME OF EACH CLIENT OF THE BUSINESS ENTITY**
19 **THAT PAID \$5,000 OR MORE TO THE BUSINESS ENTITY DURING THE APPLICABLE**
20 **PERIOD; AND**

21 **2. THE NATURE OF THE CLIENT'S BUSINESS WITH THE**
22 **BUSINESS ENTITY.**

23 5-608.

24 (a) The following are deemed to be interests of the individual under § 5-607(b),
25 (c), [and] (d), AND (L) of this subtitle:

26 (1) an interest held by a spouse or child of the individual, if the interest
27 was controlled, directly or indirectly, by the individual at any time during the applicable
28 period;

29 (2) an interest held, AT ANY TIME DURING THE APPLICABLE PERIOD,
30 by:

1 **(I)** a business entity in which the individual held a ~~[30%]~~ **10%** or
2 greater interest [at any time during the applicable period];

3 **(II)** A BUSINESS ENTITY DESCRIBED IN ITEM **(I)** OF THIS ITEM IN
4 WHICH THE BUSINESS ENTITY HELD A **25%** OR GREATER INTEREST; AND

5 **(III)** A BUSINESS ENTITY DESCRIBED IN ITEM **(II)** OF THIS ITEM
6 IN WHICH THE BUSINESS ENTITY HELD A **50%** OR GREATER INTEREST; and

7 **(3)** an interest held by a trust or an estate in which, at any time during the
8 applicable period, the individual:

9 **(i)** held a reversionary interest;

10 **(ii)** was a beneficiary; or

11 **(iii)** if a revocable trust, was a settlor.

12 **(b)** Subsection (a)(2) of this section does not affect:

13 **(1)** the requirement under § 5–607(b) of this subtitle of disclosure of real
14 estate interests held in the name of a partnership, limited liability partnership, or limited
15 liability company in which the individual holds an interest; or

16 **(2)** the requirement under § 5–607(c) of this subtitle of disclosure of all
17 partnerships, limited liability partnerships, or limited liability companies in which the
18 individual holds an interest.

19 **(c)** For the purposes of § 5–607 of this subtitle, interests held by a blind trust may
20 not be considered to be interests of the person making the statement if the blind trust is
21 approved by the Ethics Commission in accordance with regulations adopted under §
22 5–501(b) or § 5–502(c) of this title and is operated in compliance with those regulations.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2020.