

JUDICIAL PROTECTION ACT

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House Bill 5724 (proposed substitute H-1)

Sponsor: Rep. Kelly Breen

Committee: Judiciary

Complete to 6-5-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5724 would create a new act, the Judicial Protection Act, to allow judges to request that a public body or other person not publicly post or display certain information concerning the judge or certain of the judge's family members, or that they remove such information, and to require compliance with such a request. If a request were made and not complied with, the judge could go to court to compel compliance or enjoin further noncompliance.

Request

The bill would allow a *judge* to request that a *public body* or *person* not publicly post or display the *personal identifying information* of the judge or of the judge's *immediate family member*.

Judge would mean any of the following:

- A *state court judge* (defined as including only a judge or justice who is serving by election or appointment on the district court, probate court, circuit court, court of appeals, or supreme court of Michigan).
- A federal judge as defined in the federal Daniel Aderl Judicial Security and Privacy Act,¹ or a senior, recalled, or retired federal judge, if the judge serves, served, or has a *residential address* in Michigan.
- A judge serving on a tribal court for a federally recognized tribe located in Michigan.

Public body would mean any of the following:

- A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but not including the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.
- An agency, board, commission, or council in the legislative branch of the state government.
- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.
- Any other body created or primarily funded by or through state or local authority—except that the judiciary, including the office of the county clerk and its employees when acting as clerk to the circuit court, would not be a public body for purposes of the new act unless approved by the supreme court.

¹ <https://www.congress.gov/117/plaws/publ263/PLAW-117publ263.pdf#page=1064>

Person would mean an individual, corporation, limited liability company, partnership, firm, organization, association, or other legal entity (except a public body).

Personal identifying information would mean any of the following:

- Date of birth (except as described below).
- Permanent **residential address** (except for the city and township of residence).
- Address of other property owned.
- Phone number (home or cell).
- Driver's license or state identification number.
- Social Security number.
- Federal or state tax identification number.
- Personal email address.
- Personal credit, charge, or debit card information.
- Bank account information, including account or PIN numbers.
- License plate number or other unique identifier of a vehicle that is owned, leased, or regularly used by a judge or their immediate family member.
- Current or future school or day care information, including the name or address of the school or day care attended, schedule of attendance, or route taken to or from the school or day care by the judge or their immediate family member.
- Information on the employment location of a judge or their immediate family member (except for a court house), including the name or address of the employer, employment schedules, or routes taken to or from the employer.

Immediate family member would mean the spouse, child, parent, or any other familial relative of a judge (as long as the family member's permanent residence is the same as the judge's permanent residence).

Residential address would mean the place that is the settled home or domicile at which an individual legally resides and that is a residence as defined in the Michigan Election Law.²

Written request

In addition, a judge could, on a form prescribed by the State Court Administrative Office (SCAO), submit a written request to a public body or person to prevent disclosure of or remove a public posting or display of personal identifying information of the judge or their immediate family member. The form would have to include information on how to appropriately provide the form to a public body or person and would have to require both of the following, as applicable:

- Proof of the judge's office and identity.
- The personal identifying information of the judge, the judge's immediate family member, or the individual residing with the judge that the judge desires to protect. [Individuals residing with the judge who are not family members of the judge are not addressed elsewhere in the bill.]

² "'Residence'... means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a person has a residence separate from that of his or her spouse, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This [definition] does not affect existing judicial interpretation of the term residence.'" <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-168-11>

A written request provided to a public body or person as described above would remain in effect until the judge provides a signed written permission to allow the public body or person to release some or all of the personal identifying information.

Delegation of authority

Upon the written delegation of authority to SCAO by a *state court judge* as defined above, SCAO could submit a written request as described above to a public body on behalf of a judge, with the same force and effect as a written request submitted by a judge.

Requirements for public bodies

Except as otherwise provided, a public body that receives a request described above could not publicly post or display or provide to a person the specified personal identifying information of a judge or a judge's immediate family member, as applicable. A public body that has already publicly posted or displayed the specified personal identifying information would have to remove it within five business days. A public body would not have to permanently delete personal identifying information that is not accessible to the public. Any personal identifying information that a written request under these provisions applies to would be exempt from disclosure under the Freedom of Information Act (FOIA) by the public body that received the written request.

Requirements for other persons

Except as otherwise provided, a person that receives a request described above could not publicly post or display or sell, transfer, or provide to another person the specified personal identifying information of a judge or a judge's immediate family member, as applicable. A person that has already publicly posted or displayed the personal identifying information would have to remove it within five business days.

Remedies

If a public body or person is not complying with the new act, the judge could commence a civil action to compel compliance or to enjoin further noncompliance.

An action for injunctive relief against a local public body or person would have to be commenced in the circuit court for any county in which the judge serves. An action for an injunction against a state public body would have to be commenced in the court of claims. If a judge commences an action for injunctive relief, the judge would not have to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

An action for mandamus against a public body would have to be commenced in the court of appeals.

A judge who succeeds in obtaining relief in an action described above would have to recover court costs and actual attorney fees.

Exceptions

The bill would not apply to either of the following:

- The display of the personal identifying information of a judge or a judge's immediate family member if the information is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.

- After the effective date of the bill, personal identifying information voluntarily published by a judge or a judge's immediate family member.

Other provisions

It would not be a defense to a violation that the personal identifying information disclosed was publicly available from another source.

Any person could get a judge's date of birth by contacting SCAO. (The bill states that this is to comply with section 19 of Article VI of the state constitution,³ which prohibits anyone 70 years old or older from being elected or appointed to a judicial office.)

The bill states that the new act must be construed liberally to effectuate the legislative intent and the purpose of the act as complete and independent authorization for the performance of each and every act and thing authorized in the act, and all powers granted in the act must be broadly interpreted to effectuate the intent and purpose of the act and not as to limitation of powers.

FISCAL IMPACT:

House Bill 5724 would have an indeterminate fiscal impact on local units of government. Under the bill, if a public body or a person is not complying with provisions of the bill, the judge may commence a civil action to compel compliance or to enjoin further noncompliance. The number of civil actions that would be brought by judges is not known. Costs to local courts would depend on how provisions of the bill affect court caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

³ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Article-VI-19>