

HOUSE BILL No. 4084

January 29, 2003, Introduced by Reps. LaSata, Caul and Woronchak and referred to the Committee on Judiciary.

A bill to establish standards of ethical conduct for state elected public officials; to impose certain conditions on state elected public officials and enhance accountability; to require public disclosure by state elected public officials of certain transactions and to require the filing of a transactional disclosure statement; to establish an ethics board and prescribe its powers and duties; to establish a legislative ethics committee and prescribe its powers and duties; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 101. This act shall be known and may be cited as the
2 "government ethics act".

3 CHAPTER 1. DEFINITIONS; GENERAL PROVISIONS.

4 Sec. 103. For the purposes of this act:

1 (a) "Anything of value" means a tangible or intangible item
2 that has economic value and that could reasonably be considered
3 to be an advantage or of worth, use, or service to the person
4 upon whom it is conferred.

5 (b) "Anything of value" does not include any of the
6 following:

7 (i) An unsolicited token or award with a value of less than
8 \$150.00.

9 (ii) An unsolicited advertising item with a value of less
10 than \$50.00.

11 (iii) An unsolicited publication with a market value of less
12 than \$50.00 on an annual basis.

13 (iv) A discount afforded to the general public or a specified
14 group or occupation under normal business conditions. However,
15 the discount may not be based on the fact of public service
16 unless it is a discount program approved by the ethics board or
17 the legislative ethics committee.

18 (v) A contribution to a bona fide charity, made in response
19 to a direct solicitation from a state elected public official or
20 a person acting at his or her direction.

21 (vi) An unsolicited benefit conferred by a person or business
22 if the economic value totals less than \$100.00 per calendar year
23 and if there is no express or implied understanding or agreement
24 that a vote, official action, or decision of a state elected
25 public official will be influenced.

26 (vii) A tangible or intangible item for a legitimate
27 educational purpose or benefit.

1 (viii) Campaign contributions that are made and reported
2 under the Michigan campaign finance act, 1976 PA 388, MCL 169.201
3 to 169.282.

4 (c) "Confidential information" means information made
5 confidential by law or information that is conveyed or accepted
6 with the understanding that the information will only be used for
7 official purposes.

8 (d) "Conflict of interest" means a close economic association
9 or personal relationship between a state elected public official
10 and a person that is likely to be substantially affected by an
11 official action or decision of a state elected public official
12 that a reasonable person would believe conflicts with the public
13 duty or obligation of the state elected public official to
14 exercise objective independent judgment or that a reasonable
15 person would believe creates the appearance that the person may
16 have undue access to confidential information or may otherwise
17 receive favored treatment regarding a public action.

18 (e) "Ethics board" means the ethics board established under
19 section 401.

20 (f) "Governmental entity" means the executive and legislative
21 branches of this state.

22 (g) "Immediate family" means a spouse, child, including a
23 stepchild or an adopted child, grandchild, brother, sister,
24 parent, or grandparent of the state elected public official, or a
25 person claimed as a dependent on the state elected public
26 official's latest individual state income tax return.

27 (h) "Legislative ethics committee" means the legislative

1 ethics committee established under section 501.

2 (i) "Outside employer or business" means any of the
3 following:

4 (i) An activity, other than service to the governmental
5 entity, when the state elected public official receives
6 compensation for services rendered or goods sold or produced.

7 (ii) An entity, other than the governmental entity, if the
8 state elected public official is a member, official, director, or
9 employee of the entity and he or she receives compensation for
10 services rendered or goods sold or produced by the entity.
11 Compensation does not include reimbursement for necessary
12 expenses, including travel expenses.

13 (iii) An entity in which the state elected public official
14 has an ownership interest, except a corporation when the state
15 elected public official owns less than 10% of the outstanding
16 stock.

17 (j) "Person" means an individual, sole proprietorship,
18 partnership, corporation, association, or other legal entity.

19 (k) "Political subdivision" means a county, city, township,
20 village, school district, department, agency, body, board,
21 commission, or other local governmental unit.

22 (l) "State elected public official" means the governor,
23 lieutenant governor, secretary of state, attorney general, and
24 member of the state legislature. A person who is appointed to
25 fill a vacancy in a state elected public office that is
26 ordinarily elective is a state elected public official.

27 (m) "Transactional disclosure statement" means a report filed

1 by a state elected public official if the state elected public
2 official is required to abstain from acting under section 217.

3 CHAPTER 2. CODE OF ETHICS.

4 Sec. 201. Except as otherwise provided by law, a state
5 elected public official shall not use his or her public position,
6 or take or fail to take action, in order to obtain anything of
7 value, for himself or herself or another person or entity.

8 Sec. 203. (1) A state elected public official shall not
9 solicit or accept anything of value in connection with his or her
10 official responsibilities.

11 (2) A person shall not offer or give anything of value in
12 connection with a state elected public official's official
13 responsibilities to any of the following:

14 (a) A state elected public official.

15 (b) A member of the state elected public official's immediate
16 family.

17 (c) An outside employer or business with which the state
18 elected public official is associated.

19 (d) A customer or client of the state elected public
20 official.

21 Sec. 205. A state elected public official shall not
22 represent for compensation a person in a matter that the person
23 has before the branch of state government with which the state
24 elected public official is directly affiliated.

25 Sec. 207. A state elected public official or a former state
26 elected public official employee shall not use or disclose
27 confidential information to further his or her own or another

1 person's interests, except to the extent permitted by law.

2 Sec. 209. A state elected public official shall not request
3 or authorize a person to request a subordinate of the state
4 elected public official to participate in an election campaign or
5 contribute to a political committee unless that subordinate is a
6 political appointee.

7 Sec. 211. (1) A state elected public official, a member of
8 that person's immediate family, or an outside employer or
9 business with which the person is associated shall not enter into
10 a contract valued at \$1,500.00 or more with the governmental
11 entity with which the state elected public official is affiliated
12 unless the contract is awarded through an open and public
13 competitive process that includes prior public notice and
14 subsequent availability for public inspection of the proposals
15 considered and the contract awarded.

16 (2) A state elected public official who has or later acquires
17 an interest in an actual or proposed contract with the government
18 entity with whom the state elected public official is affiliated
19 shall publicly disclose the nature and extent of that interest as
20 required by section 217.

21 (3) A contract or agreement that is executed in violation of
22 this section is voidable only if the person who entered into the
23 contract or took assignment of the contract had actual knowledge
24 of the prohibited conflict. If a person is other than an
25 individual, the actual knowledge must be that of an individual or
26 body finally approving the contract. A contract involving a
27 prohibited conflict of interest under this section is voidable

1 only by a decree of a court of proper jurisdiction. A decree of
2 a court of proper jurisdiction may provide for the reimbursement
3 of a person for the reasonable value of money, goods, material,
4 labor, or services furnished under the contract, to the extent
5 that the governmental entity has benefited. This provision does
6 not prohibit the parties from reaching a settlement outside of
7 court.

8 Sec. 213. A former state elected public official shall not
9 appear or practice before the governmental entity with which he
10 or she was affiliated, except on his or her own behalf, or
11 receive compensation for working on a matter before that
12 governmental entity, for a period of 3 months after the
13 termination of his or her official service.

14 Sec. 215. (1) A person shall not induce or attempt to
15 induce a state elected public official to violate any of the
16 provisions of this chapter.

17 (2) Nothing in this section shall be construed to prohibit a
18 person from receiving a service or benefit, or from using a
19 facility, that is generally available to the public, provided the
20 person does so in the same manner or degree that is available to
21 the general public.

22 (3) Under this section, a corporation, partnership, limited
23 liability company, or other entity is not vicariously liable for
24 the actions of an employee unless the employee acted in the
25 execution of company policy or custom.

26 Sec. 217. (1) A state elected public official shall abstain
27 from acting formally or informally on a matter before a

1 governmental entity with which he or she is affiliated if he or
2 she knows that acting on the matter, or failing to act on the
3 matter, may result in a conflict of interest or a violation of
4 this chapter.

5 (2) If a state elected public official is required to abstain
6 from acting on a matter, he or she shall file a transactional
7 disclosure statement with the ethics board within 21 days.

8 (3) A transactional disclosure statement shall include all
9 the information related to the conflict of interest and the
10 reason for the state elected public official abstaining from
11 acting under subsection (1).

12 Sec. 219. This chapter does not prohibit or require conduct
13 specifically authorized by statute, rule, regulation, the state
14 constitution of 1963, or the constitution of the United States.

15 CHAPTER 3. PENALTIES.

16 Sec. 301. The person or body authorized by law to impose
17 disciplinary action shall initiate appropriate proceedings and
18 may take appropriate disciplinary action concerning a state
19 elected public official who violates this act.

20 Sec. 303. A state elected public official who violates this
21 act is subject to a civil fine of up to \$1,500.00 for each
22 violation, in addition to another penalty provided in this act or
23 other law of this state. The civil fine shall be imposed by a
24 court of proper jurisdiction or the person or body authorized by
25 law to impose sanctions.

26 Sec. 305. A person who violates this act is liable for
27 damages to the governmental entity for losses or increased costs

1 incurred by the governmental entity as a result of the
2 violation. Damages may be imposed by a court of proper
3 jurisdiction in addition to another penalty contained in another
4 provision of law.

5 Sec. 307. A person required by section 217 to file a
6 transactional disclosure statement who willfully files a false or
7 incomplete transactional disclosure statement or who fails to
8 file an acceptable transactional disclosure statement within the
9 time prescribed is guilty of a misdemeanor punishable by a fine
10 of not more than \$1,000.00, or imprisonment for not more than 90
11 days, or both.

12 Sec. 309. Except as otherwise provided in this act, a
13 person who violates chapter 2 is guilty of a misdemeanor
14 punishable by a fine of not more than \$1,000.00 or imprisonment
15 for not more than 90 days, or both, and additional penalties as
16 specified in this chapter.

17 CHAPTER 4. ETHICS BOARD.

18 Sec. 401. (1) The ethics board is created as an autonomous
19 entity within the department of state.

20 (2) The ethics board shall consist of 7 members appointed by
21 the governor.

22 (3) A term expires on March 31 of the year when the term is
23 designated to expire. The 7 members first appointed to the
24 ethics board shall be appointed within 90 days after the
25 effective date of this act.

26 (4) A member of the ethics board shall serve for a 4-year
27 term or until a successor is appointed, whichever is later,

1 except that of the members first appointed, 2 shall serve for 2
2 years, 3 shall serve for 3 years, and 2 shall serve for 4 years.
3 A person shall not serve more than 2 full 4-year terms on the
4 ethics board.

5 (5) If a vacancy occurs on the ethics board, the governor
6 shall make an appointment for the unexpired term in the same
7 manner as the original appointment.

8 (6) The governor may remove a member of the ethics board for
9 incompetency, dereliction of duty, malfeasance, misfeasance, or
10 nonfeasance in office or another good cause.

11 (7) At the first meeting, the ethics board shall elect from
12 among its members a chairperson and vice-chairperson. The
13 vice-chairperson shall serve as chairperson in the absence of the
14 chairperson. After the first meeting, the ethics board shall
15 meet at least quarterly, or more frequently at the call of the
16 chairperson or if requested by 4 or more members.

17 (8) Four members of the ethics board constitute a quorum for
18 the transaction of business. A majority of the members present
19 and serving are required for official action of the ethics
20 board. A vote shall be by record roll call.

21 (9) The business conducted by the ethics board shall be
22 conducted in compliance with the open meetings act, 1976 PA 267,
23 MCL 15.261 to 15.275. Notice of the meetings of the board shall
24 be made public in compliance with the open meetings act, 1976
25 PA 267, MCL 15.261 to 15.275.

26 (10) A writing prepared, owned, used, in the possession of,
27 or retained by the ethics board in the performance of an official

1 function is subject to the freedom of information act, 1976
2 PA 442, MCL 15.231 to 15.246.

3 (11) A member of the ethics board shall serve without
4 compensation. However, a member of the ethics board may be
5 reimbursed for his or her actual and necessary expenses incurred
6 in the performance of official duties as a member of the ethics
7 board.

8 (12) The ethics board shall do all of the following:

9 (a) Promulgate rules in accordance with the administrative
10 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
11 carry out the provisions of this act and to govern its own
12 procedures.

13 (b) Appoint hearing officials, an executive director, if
14 necessary, and other staff necessary to carry out its duties
15 under this act. The ethics board may delegate authority to the
16 executive director to act in the name of the board between
17 meetings of the board, if the delegation is in writing and the
18 specific powers to be delegated are enumerated. The board shall
19 not delegate the power to determine violations, recommend
20 disciplinary action, impose a civil fine, refer a matter to the
21 attorney general, or render an advisory opinion. An executive
22 director is subject to the restrictions of an ethics board member
23 as specified in section 403.

24 (c) Examine transactional disclosure statements filed under
25 section 217 and the supporting records and other documents. The
26 ethics board shall index and maintain on file for at least
27 7 years all transactional disclosure statements filed under this

1 act.

2 (d) Review, index, maintain on file, and dispose of sworn
3 complaints and make notifications and conduct investigations. In
4 conducting an investigation, the ethics board may administer
5 oaths or affirmations, subpoena witnesses, compel their
6 attendance, and require the production of books or records that
7 it considers relevant and material.

8 (e) Conduct hearings, recommend disciplinary action, assess
9 penalties, make referrals, and initiate appropriate actions and
10 proceedings under section 411.

11 (f) Grant waivers under section 413.

12 (g) Render, index, and maintain on file advisory opinions
13 under section 415 and prepare and publish nonconfidential special
14 reports and technical studies to further the purposes of this
15 act. The attorney general shall advise the board concerning
16 legal matters in the issuance of advisory opinions, investigative
17 reports, recommendations, and other reports.

18 (h) Provide training and education to state elected public
19 officials under section 419.

20 (i) Prepare an annual report and recommend changes to this
21 act under section 421.

22 (j) Provide for public inspection of certain records as
23 provided by law.

24 (k) Select provisions of this act, special reports, and
25 technical studies for reproduction and distribution under
26 section 423.

27 (13) The state personnel director shall provide clerical or

1 administrative assistance from the department of state as the
2 board may request.

3 Sec. 403. A member of the ethics board shall not, while a
4 member of the board:

5 (a) Hold elective public office or elective political party
6 office.

7 (b) Accept appointment to or become a candidate for public
8 office or elective political party office.

9 (c) Be employed as or act as a lobbyist.

10 (d) Participate in an election campaign. An ethics board
11 member may make campaign contributions.

12 Sec. 405. (1) The ethics board may only act with respect to
13 the state elected public officials covered by this act.

14 (2) The termination of a state elected public official's term
15 of office does not affect the jurisdiction of the ethics board
16 with respect to the requirements imposed on him or her by this
17 act.

18 Sec. 409. (1) If a majority vote of the board determines
19 that there is reason to believe that this act was violated, the
20 board shall initiate an investigative proceeding to determine
21 whether a violation occurred. The board shall mail a notice of
22 the investigation and the nature of the alleged violation to a
23 person under investigation within 5 days after the decision to
24 undertake an investigation is made. Every 60 days until a final
25 determination is made, the board shall mail to the complainant
26 and to the person under investigation notice of the action taken
27 to date by the board along with the reasons for the action or

1 nonaction.

2 (2) Except as otherwise required by law, the board's actions
3 and the records relative to an investigation shall be
4 confidential until the board makes a final determination under
5 this section.

6 (3) All governmental entities shall cooperate with the board
7 when it is conducting an investigation.

8 (4) If the ethics board determines that this act was not
9 violated, the records and actions relative to the investigation
10 and determination shall remain confidential unless the person
11 investigated requests in writing that the records and actions be
12 made public. If the ethics board determines that this act was
13 violated, the ethics board shall make a recommendation of
14 sanction to the appropriate authority designated in section 411.

15 Sec. 411. (1) After a hearing providing for due process
16 procedural requirements and subject to applicable provisions of
17 law, the ethics board may recommend disciplinary action under
18 section 301 of this act. The recommendation of the ethics board
19 shall be made to the person or body authorized by law to impose
20 or recommend discipline. For the purpose of this act, the person
21 or body authorized by law to impose or recommend discipline for a
22 state elected public official is 1 of the following:

23 (a) For a legislator, the legislative ethics committee
24 created under section 501.

25 (b) For the attorney general or secretary of state, the
26 governor.

27 (c) For the governor or lieutenant governor, the

1 legislature.

2 (2) The board shall conduct and complete the hearing with
3 reasonable promptness. If the ethics board refers the matter to
4 the person or body authorized by law to impose disciplinary
5 action or if the ethics board refers the matter to the attorney
6 general, the ethics board may adjourn the matter pending
7 determination by the person, body, or attorney general.

8 (3) After a hearing providing for due process procedural
9 requirements, the ethics board may recommend that sanctions and
10 penalties be imposed upon a state elected public official found
11 by the board to have violated this act. The recommendation of
12 the ethics board shall be made to the person or body authorized
13 by law to impose or recommend sanctions. If a state elected
14 public official is ordered to pay a civil fine, the state elected
15 public official shall pay the fine to the department of state.

16 (4) The governmental entity with which the state elected
17 public official is affiliated or the ethics board on behalf of
18 the governmental entity may initiate an action or special
19 proceeding in the court of appropriate jurisdiction to obtain
20 damages under section 305.

21 (5) The ethics board may refer to the attorney general
22 possible criminal violations of this act. Nothing contained in
23 this act shall be construed to restrict the authority of the
24 attorney general to prosecute a person for a violation of this
25 act or of any other law.

26 (6) For a person other than the ethics board or governmental
27 entity to bring an action or special proceeding, all of the

1 following apply:

2 (a) The person initiating the action or special proceeding
3 has filed a sworn complaint alleging the violation by the state
4 elected public official with the ethics board.

5 (b) An allegation in the complaint filed with the court
6 alleges that at least 6 months have elapsed since the complaint
7 was filed with the ethics board and that the ethics board has
8 failed to file a final determination in the matter.

9 (c) The action or special proceeding commences within 10
10 months after the complaint is filed with the ethics board.

11 Sec. 413. (1) Upon written application and upon a showing
12 of compelling need by the state elected public official, the
13 ethics board may grant the state elected public official a waiver
14 of a provision of this act.

15 (2) A waiver may only be granted at an open meeting after
16 public notice as provided in the open meetings act, 1976 PA 267,
17 MCL 15.261 to 15.275. The notice must state that a waiver is
18 being considered. A waiver shall be in writing and shall state
19 the grounds upon which it is granted. Within 10 days after
20 granting a waiver, the ethics board shall send a copy of the
21 decision to the state elected public official, the person or body
22 authorized by law to impose discipline upon the state elected
23 public official, and the secretary of state stating the name of
24 the person requesting the waiver and a general description of the
25 circumstances of the waiver. All applications, decisions, and
26 other records and proceedings relating to a waiver shall be
27 indexed and maintained on file by the ethics board.

1 Sec. 415. (1) Upon the written request of a state elected
2 public official, the ethics board shall render a written advisory
3 opinion regarding the interpretation or application of this act.

4 (2) Advisory opinions and requests for advisory opinions
5 shall be indexed and maintained on file by the ethics board.

6 (3) A state elected public official who has submitted to the
7 ethics board a written request for an advisory opinion may bring
8 and maintain a civil action by right against the board to compel
9 it to issue the advisory opinion. The complaint shall clearly
10 identify the matters or proceedings before the board that are
11 involved. No action shall be prosecuted or maintained under this
12 section unless both of the following apply:

13 (a) The complaint or petition alleges that at least 6 months
14 have elapsed since the filing of the request and that the ethics
15 board has failed to issue an advisory opinion in the matter.

16 (b) The action is commenced within 10 months after the
17 submission of the request for the advisory opinion.

18 (4) An advisory opinion rendered by the ethics board, until
19 and unless amended or revoked, is binding on the ethics board in
20 a subsequent proceeding concerning the person who requested the
21 opinion and who acted in good faith, unless the person omitted or
22 misstated a material fact. The opinion may also be relied upon
23 by the person, and may be introduced and used as a defense, in a
24 civil action brought by the ethics board or governmental entity.

25 Sec. 417. A person aggrieved by a decision of the ethics
26 board may seek judicial review and relief in a court of proper
27 jurisdiction.

1 Sec. 419. The ethics board shall do both of the following:

2 (a) Make information concerning this act available to each
3 state elected public official, to the public, and to persons
4 interested in doing business with this state, through the
5 secretary of state, and other necessary means.

6 (b) Develop educational materials and an educational program
7 for state elected public officials of their duties and
8 responsibilities under this act.

9 Sec. 421. (1) The ethics board shall prepare and submit an
10 annual report to the governor and legislature, summarizing the
11 activities of the board. The report may also recommend statutory
12 or administrative changes to this act.

13 (2) The ethics board shall annually review this act and the
14 board's rules, regulations, and administrative procedures to
15 determine whether they promote integrity, public confidence, and
16 participation in state government and whether they set forth
17 clear and enforceable common sense standards of conduct.

18 Sec. 423. (1) Within 90 days after the first meeting of the
19 ethics board, and after then as appropriate, the ethics board
20 shall transmit to the secretary of state, in a suitable form,
21 copies of the provisions of this act that the ethics board
22 considers necessary for posting and distribution. Within 10 days
23 after receipt of those copies, the secretary of state shall do
24 all of the following:

25 (a) Conspicuously post the copies received from the ethics
26 board in each public building under the jurisdiction of this
27 state.

1 (b) Distribute the copies received from the ethics board to
2 each state elected public official.

3 (c) Make the copies received from the ethics board available
4 to the public.

5 (2) A state elected public official elected after the
6 effective date of this act shall be furnished a copy of those
7 provisions within 10 days after entering upon the duties of the
8 state elected public official's position.

9 (3) Failure of the secretary of state to comply with the
10 provisions of this section or failure of a state elected public
11 official to receive a copy of the provisions of this act does not
12 affect the duty of compliance with this act or the enforcement of
13 this act's provisions.

14 (4) The ethics board shall transmit to the secretary of
15 state, in a form suitable for distribution, copies of special
16 reports and technical studies relating to this act and its
17 administration.

18 CHAPTER 5. LEGISLATIVE ETHICS COMMITTEE.

19 Sec. 501. (1) The legislative ethics committee is
20 established within the legislature and shall consist of 3 members
21 of the senate and 3 members of the house of representatives. At
22 least 1 member from each house shall be a member of the minority
23 party, to be appointed in the same manner as standing committees
24 of the senate and the house of representatives. The members of
25 the legislative ethics committee shall serve without
26 compensation, but shall be entitled to actual and necessary
27 expenses while on committee business. The legislative ethics

1 committee may establish, by majority vote, its rules and
2 procedures.

3 (2) The legislative ethics committee shall act upon a
4 recommendation made by the ethics board under section 411. The
5 committee shall conduct an investigation and issue a report and
6 recommendation to the appropriate house of the legislature.

7 Enacting section 1. The following acts are repealed:

8 (a) 1968 PA 317, MCL 15.321 to 15.330.

9 (b) 1968 PA 318, MCL 15.301 to 15.310.

10 (c) 1973 PA 196, MCL 15.341 to 15.348.

11 Enacting section 2. This act shall take effect on
12 January 1, 2004.

13 Enacting section 3. Pursuant to section 8 of article III of
14 the state constitution of 1963, the state supreme court shall
15 rule on the constitutionality of this act before January 1,
16 2004.