

HOUSE BILL No. 4070

January 31, 2001, Introduced by Reps. Bishop, Cassis, Stamas, Birkholz, Pappageorge, Mead, Shackleton and Raczkowski and referred to the Committee on House Oversight and Operations.

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".

1 CHAPTER 1. DEFINITIONS; GENERAL PROVISIONS.

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

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

7 (b) "Anything of value" does not include any of the
8 following:

9 (i) An unsolicited token or award with a value of less than
10 \$150.00.

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

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

15 (iv) A discount afforded to the general public or a speci-
16 fied group or occupation under normal business conditions.

17 However, the discount may not be based on the fact of public
18 service unless it is a discount program approved by the ethics
19 board or the legislative ethics committee.

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

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

1 (vii) A tangible or intangible item for a legitimate
2 educational purpose or benefit.

3 (viii) Campaign contributions that are made and reported
4 under the campaign finance act, 1976 PA 388, MCL 169.201 to
5 169.282.

6 (c) "Confidential information" means information made confi-
7 dential by law or information that is conveyed or accepted with
8 the understanding that the information will only be used for
9 official purposes.

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

20 (e) "Ethics board" means the ethics board established under
21 section 401.

22 (f) "Governmental entity" means the executive and legisla-
23 tive branches of this state.

24 (g) "Immediate family" means a spouse, child, including a
25 stepchild or an adopted child, grandchild, brother, sister,
26 parent, or grandparent of the state elected public official, or a

1 person claimed as a dependent on the state elected public
2 official's latest individual state income tax return.

3 (h) "Legislative ethics committee" means the legislative
4 ethics committee established under section 501.

5 (i) "Outside employer or business" means any of the
6 following:

7 (i) An activity, other than service to the governmental
8 entity, when the state elected public official receives compensa-
9 tion for services rendered or goods sold or produced.

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

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

20 (j) "Person" means an individual, sole proprietorship, part-
21 nership, corporation, association, or other legal entity.

22 (k) "Political subdivision" means a county, city, township,
23 village, school district, department, agency, body, board, com-
24 mission, or other local governmental unit.

25 (l) "State elected public official" means the governor,
26 lieutenant governor, secretary of state, attorney general, and
27 member of the state legislature. A person who is appointed to

1 fill a vacancy in a state elected public office that is
2 ordinarily elective is a state elected public official.

3 (m) "Transactional disclosure statement" means a report
4 filed by a state elected public official if the state elected
5 public official is required to abstain from acting under
6 section 217.

7 CHAPTER 2. CODE OF ETHICS.

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

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

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

18 (a) A state elected public official.

19 (b) A member of the state elected public official's immedi-
20 ate family.

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

23 (d) A customer or client of the state elected public
24 official.

25 Sec. 205. A state elected public official shall not repre-
26 sent for compensation a person in a matter that the person has

1 before the branch of state government with which the state
2 elected public official is directly affiliated.

3 Sec. 207. A state elected public official or a former state
4 elected public official employee shall not use or disclose confi-
5 dential information to further his or her own or another person's
6 interests, except to the extent permitted by law.

7 Sec. 209. A state elected public official shall not request
8 or authorize a person to request a subordinate of the state
9 elected public official to participate in an election campaign or
10 contribute to a political committee unless that subordinate is a
11 political appointee.

12 Sec. 211. (1) A state elected public official, a member of
13 that person's immediate family, or an outside employer or busi-
14 ness with which the person is associated shall not enter into a
15 contract valued at \$1,500.00 or more with the governmental entity
16 with which the state elected public official is affiliated unless
17 the contract is awarded through an open and public competitive
18 process that includes prior public notice and subsequent avail-
19 ability for public inspection of the proposals considered and the
20 contract awarded.

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

26 (3) A contract or agreement that is executed in violation of
27 this section is voidable only if the person who entered into the

1 contract or took assignment of the contract had actual knowledge
2 of the prohibited conflict. If a person is other than an indi-
3 vidual, the actual knowledge must be that of an individual or
4 body finally approving the contract. A contract involving a pro-
5 hibited conflict of interest under this section is voidable only
6 by a decree of a court of proper jurisdiction. A decree of a
7 court of proper jurisdiction may provide for the reimbursement of
8 a person for the reasonable value of money, goods, material,
9 labor, or services furnished under the contract, to the extent
10 that the governmental entity has benefited. This provision does
11 not prohibit the parties from reaching a settlement outside of
12 court.

13 Sec. 213. A former state elected public official shall not
14 appear or practice before the governmental entity with which he
15 or she was affiliated, except on his or her own behalf, or
16 receive compensation for working on a matter before that govern-
17 mental entity, for a period of 3 months after the termination of
18 his or her official service.

19 Sec. 215. (1) A person shall not induce or attempt to
20 induce a state elected public official to violate any of the pro-
21 visions of this chapter.

22 (2) Nothing in this section shall be construed to prohibit a
23 person from receiving a service or benefit, or from using a
24 facility, that is generally available to the public, provided the
25 person does so in the same manner or degree that is available to
26 the general public.

1 (3) Under this section, a corporation, partnership, limited
2 liability company, or other entity is not vicariously liable for
3 the actions of an employee unless the employee acted in the exe-
4 cution of company policy or custom.

5 Sec. 217. (1) A state elected public official shall abstain
6 from acting formally or informally on a matter before a govern-
7 mental entity with which he or she is affiliated if he or she
8 knows that acting on the matter, or failing to act on the matter,
9 may result in a conflict of interest or a violation of this
10 chapter.

11 (2) If a state elected public official is required to
12 abstain from acting on a matter, he or she shall file a transac-
13 tional disclosure statement with the ethics board within
14 21 days.

15 (3) A transactional disclosure statement shall include all
16 the information related to the conflict of interest and the
17 reason for the state elected public official abstaining from
18 acting under subsection (1).

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

22 CHAPTER 3. PENALTIES

23 Sec. 301. The person or body authorized by law to impose
24 disciplinary action shall initiate appropriate proceedings and
25 may take appropriate disciplinary action concerning a state
26 elected public official who violates this act.

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

7 Sec. 305. A person who violates this act is liable for dam-
8 ages to the governmental entity for losses or increased costs
9 incurred by the governmental entity as a result of the
10 violation. Damages may be imposed by a court of proper jurisdic-
11 tion in addition to another penalty contained in another provi-
12 sion of law.

13 Sec. 307. A person required by section 217 to file a trans-
14 actional disclosure statement who willfully files a false or
15 incomplete transactional disclosure statement or who fails to
16 file an acceptable transactional disclosure statement within the
17 time prescribed is guilty of a misdemeanor punishable by a fine
18 of not more than \$1,000.00, or imprisonment for not more than 90
19 days, or both.

20 Sec. 309. Except as otherwise provided in this act, a
21 person who violates chapter 2 is guilty of a misdemeanor punish-
22 able by a fine of not more than \$1,000.00 or imprisonment for not
23 more than 90 days, or both, and additional penalties as specified
24 in this chapter.

25 CHAPTER 4. ETHICS BOARD.

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

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

3 (3) A term expires on March 31 of the year when the term is
4 designated to expire. The 7 members first appointed to the
5 ethics board shall be appointed within 90 days after the effec-
6 tive date of this act.

7 (4) A member of the ethics board shall serve for a 4-year
8 term or until a successor is appointed, whichever is later,
9 except that of the members first appointed, 2 shall serve for 2
10 years, 3 shall serve for 3 years, and 2 shall serve for 4 years.
11 A person shall not serve more than 2 full 4-year terms on the
12 ethics board.

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

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

19 (7) At the first meeting, the ethics board shall elect from
20 among its members a chairperson and vice-chairperson. The
21 vice-chairperson shall serve as chairperson in the absence of the
22 chairperson. After the first meeting, the ethics board shall
23 meet at least quarterly, or more frequently at the call of the
24 chairperson or if requested by 4 or more members.

25 (8) Four members of the ethics board constitute a quorum for
26 the transaction of business. A majority of the members present

1 and serving are required for official action of the ethics
2 board. A vote shall be by record roll call.

3 (9) The business conducted by the ethics board shall be con-
4 ducted in compliance with the open meetings act, 1976 PA 267,
5 MCL 15.261 to 15.275. Notice of the meetings of the board shall
6 be made public in compliance with the open meetings act, 1976
7 PA 267, MCL 15.261 to 15.275.

8 (10) A writing prepared, owned, used, in the possession of,
9 or retained by the ethics board in the performance of an official
10 function is subject to the freedom of information act, 1976
11 PA 442, MCL 15.231 to 15.246.

12 (11) A member of the ethics board shall serve without
13 compensation. However, a member of the ethics board may be reim-
14 bursed for his or her actual and necessary expenses incurred in
15 the performance of official duties as a member of the ethics
16 board.

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

18 (a) Promulgate rules in accordance with the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
20 carry out the provisions of this act and to govern its own
21 procedures.

22 (b) Appoint hearing officials, an executive director, if
23 necessary, and other staff necessary to carry out its duties
24 under this act. The ethics board may delegate authority to the
25 executive director to act in the name of the board between meet-
26 ings of the board, if the delegation is in writing and the
27 specific powers to be delegated are enumerated. The board shall

1 not delegate the power to determine violations, recommend
2 disciplinary action, impose a civil fine, refer a matter to the
3 attorney general, or render an advisory opinion. An executive
4 director is subject to the restrictions of an ethics board member
5 as specified in section 403.

6 (c) Examine transactional disclosure statements filed under
7 section 217 and the supporting records and other documents. The
8 ethics board shall index and maintain on file for at least
9 7 years all transactional disclosure statements filed under this
10 act.

11 (d) Review, index, maintain on file, and dispose of sworn
12 complaints and make notifications and conduct investigations. In
13 conducting an investigation, the ethics board may administer
14 oaths or affirmations, subpoena witnesses, compel their
15 attendance, and require the production of books or records that
16 it considers relevant and material.

17 (e) Conduct hearings, recommend disciplinary action, assess
18 penalties, make referrals, and initiate appropriate actions and
19 proceedings under section 411.

20 (f) Grant waivers under section 413.

21 (g) Render, index, and maintain on file advisory opinions
22 under section 415 and prepare and publish nonconfidential special
23 reports and technical studies to further the purposes of this
24 act. The attorney general shall advise the board concerning
25 legal matters in the issuance of advisory opinions, investigative
26 reports, recommendations, and other reports.

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

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

5 (j) Provide for public inspection of certain records as pro-
6 vided by law.

7 (k) Select provisions of this act, special reports, and
8 technical studies for reproduction and distribution under
9 section 423.

10 (13) The state personnel director shall provide clerical or
11 administrative assistance from the department of state as the
12 board may request.

13 Sec. 403. A member of the ethics board shall not, while a
14 member of the board:

15 (a) Hold elective public office or elective political party
16 office.

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

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

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

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

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

1 Sec. 409. (1) If a majority vote of the board determines
2 that there is reason to believe that this act was violated, the
3 board shall initiate an investigative proceeding to determine
4 whether a violation occurred. The board shall mail a notice of
5 the investigation and the nature of the alleged violation to a
6 person under investigation within 5 days after the decision to
7 undertake an investigation is made. Every 60 days until a final
8 determination is made, the board shall mail to the complainant
9 and to the person under investigation notice of the action taken
10 to date by the board along with the reasons for the action or
11 nonaction.

12 (2) Except as otherwise required by law, the board's actions
13 and the records relative to an investigation shall be confiden-
14 tial until the board makes a final determination under this
15 section.

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

18 (4) If the ethics board determines that this act was not
19 violated, the records and actions relative to the investigation
20 and determination shall remain confidential unless the person
21 investigated requests in writing that the records and actions be
22 made public. If the ethics board determines that this act was
23 violated, the ethics board shall make a recommendation of sanc-
24 tion to the appropriate authority designated in section 411.

25 Sec. 411. (1) After a hearing providing for due process
26 procedural requirements and subject to applicable provisions of
27 law, the ethics board may recommend disciplinary action under

1 section 301 of this act. The recommendation of the ethics board
2 shall be made to the person or body authorized by law to impose
3 or recommend discipline. For the purpose of this act, the person
4 or body authorized by law to impose or recommend discipline for a
5 state elected public official is 1 of the following:

6 (a) For a legislator, the legislative ethics committee cre-
7 ated under section 501.

8 (b) For the attorney general or secretary of state, the
9 governor.

10 (c) For the governor or lieutenant governor, the
11 legislature.

12 (2) The board shall conduct and complete the hearing with
13 reasonable promptness. If the ethics board refers the matter to
14 the person or body authorized by law to impose disciplinary
15 action or if the ethics board refers the matter to the attorney
16 general, the ethics board may adjourn the matter pending determi-
17 nation by the person, body, or attorney general.

18 (3) After a hearing providing for due process procedural
19 requirements, the ethics board may recommend that sanctions and
20 penalties be imposed upon a state elected public official found
21 by the board to have violated this act. The recommendation of
22 the ethics board shall be made to the person or body authorized
23 by law to impose or recommend sanctions. If a state elected
24 public official is ordered to pay a civil fine, the state elected
25 public official shall pay the fine to the department of state.

26 (4) The governmental entity with which the state elected
27 public official is affiliated or the ethics board on behalf of

1 the governmental entity may initiate an action or special
2 proceeding in the court of appropriate jurisdiction to obtain
3 damages under section 305.

4 (5) The ethics board may refer to the attorney general pos-
5 sible criminal violations of this act. Nothing contained in this
6 act shall be construed to restrict the authority of the attorney
7 general to prosecute a person for a violation of this act or of
8 any other law.

9 (6) For a person other than the ethics board or governmental
10 entity to bring an action or special proceeding, all of the fol-
11 lowing apply:

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

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

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

21 Sec. 413. (1) Upon written application and upon a showing
22 of compelling need by the state elected public official, the
23 ethics board may grant the state elected public official a waiver
24 of a provision of this act.

25 (2) A waiver may only be granted at an open meeting after
26 public notice as provided in the open meetings act, 1976 PA 267,
27 MCL 15.261 to 15.275. The notice must state that a waiver is

1 being considered. A waiver shall be in writing and shall state
2 the grounds upon which it is granted. Within 10 days after
3 granting a waiver, the ethics board shall send a copy of the
4 decision to the state elected public official, the person or body
5 authorized by law to impose discipline upon the state elected
6 public official, and the secretary of state stating the name of
7 the person requesting the waiver and a general description of the
8 circumstances of the waiver. All applications, decisions, and
9 other records and proceedings relating to a waiver shall be
10 indexed and maintained on file by the ethics board.

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

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

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

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

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

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

8 Sec. 417. A person aggrieved by a decision of the ethics
9 board may seek judicial review and relief in a court of proper
10 jurisdiction.

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

12 (a) Make information concerning this act available to each
13 state elected public official, to the public, and to persons
14 interested in doing business with this state, through the secre-
15 tary of state, and other necessary means.

16 (b) Develop educational materials and an educational program
17 for state elected public officials of their duties and responsi-
18 bilities under this act.

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

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

1 Sec. 423. (1) Within 90 days after the first meeting of the
2 ethics board, and after then as appropriate, the ethics board
3 shall transmit to the secretary of state, in a suitable form,
4 copies of the provisions of this act that the ethics board con-
5 siderers necessary for posting and distribution. Within 10 days
6 after receipt of those copies, the secretary of state shall do
7 all of the following:

8 (a) Conspicuously post the copies received from the ethics
9 board in each public building under the jurisdiction of this
10 state.

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

13 (c) Make the copies received from the ethics board available
14 to the public.

15 (2) A state elected public official elected after the effec-
16 tive date of this act shall be furnished a copy of those provi-
17 sions within 10 days after entering upon the duties of the state
18 elected public official's position.

19 (3) Failure of the secretary of state to comply with the
20 provisions of this section or failure of a state elected public
21 official to receive a copy of the provisions of this act does not
22 affect the duty of compliance with this act or the enforcement of
23 this act's provisions.

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

CHAPTER 5. LEGISLATIVE ETHICS COMMITTEE.

Sec. 501. (1) The legislative ethics committee is established within the legislature and shall consist of 3 members of the senate and 3 members of the house of representatives. At least 1 member from each house shall be a member of the minority party, to be appointed in the same manner as standing committees of the senate and the house of representatives. The members of the legislative ethics committee shall serve without compensation, but shall be entitled to actual and necessary expenses while on committee business. The legislative ethics committee may establish, by majority vote, its rules and procedures.

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

Enacting section 1. The following acts are repealed:

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

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

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

Enacting section 2. This act shall take effect on January 1, 2002.

Enacting section 3. Pursuant to section 8 of article III of the state constitution of 1963, the state supreme court shall rule on the constitutionality of this act before January 1, 2002.