



SENATE BILL No. 794

December 6, 1995, Introduced by Senators SCHUETTE, BENNETT, HONIGMAN, ROGERS and SHUGARS and referred to the Committee on Government Operations.

A bill to regulate political activity; to regulate certain candidates and state officials; to require certain financial statements and reports; to prescribe the powers and duties of certain state departments, state and local officials and employees, and other persons; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan financial disclosure act".

3 Sec. 2. As used in this act:

4 (a) "Broker" means that term as defined in section 3(a)(4)
5 of title I of the securities exchange act of 1934, chapter 404,
6 48 Stat. 882, 15 U.S.C. 78c.

1 (b) "Candidate" means that term as defined in section 3 of
2 the Michigan campaign finance act, Act No. 388 of the Public Acts
3 of 1976, being section 169.203 of the Michigan Compiled Laws.

4 (c) "Candidate for state office" means a candidate for any
5 of the following:

6 (i) The office of governor.

7 (ii) The office of lieutenant governor.

8 (iii) The office of attorney general.

9 (iv) The office of secretary of state.

10 (v) The office of state senator.

11 (vi) The office of state representative.

12 (vii) The office of supreme court justice.

13 (d) "Dependent child" means a son, daughter, stepson, or
14 stepdaughter of a reporting individual, if that child meets 1 of
15 the following requirements:

16 (i) Is unmarried, is under the age of 21, and is living in
17 the household of the reporting individual.

18 (ii) Is a dependent of the reporting individual within the
19 meaning of section 152 of the internal revenue code, 26
20 U.S.C. 152.

21 (e) "Honorarium" means that term as defined in section 7 of
22 Act No. 388 of the Public Acts of 1976, being section 169.207 of
23 the Michigan Compiled Laws.

24 (f) "Income" means any form of recompense considered income
25 under the internal revenue code regardless of its source. Income
26 includes but is not limited to all of the following:

1 (i) Compensation for services rendered including salary,
2 tips, fees, commissions, and other similar items.

3 (ii) Gross income derived from a business and net income if
4 the individual elects to include it.

5 (iii) Gains derived from dealings in property.

6 (iv) Interest.

7 (v) Rents.

8 (vi) Royalties.

9 (vii) Dividends.

10 (viii) Annuities.

11 (ix) Income from life insurance and endowment contracts.

12 (x) Pensions and other retirement benefit payments.

13 (xi) Income from discharge of indebtedness.

14 (xii) Distributive share of partnership income.

15 (xiii) Income from an interest in an estate or trust.

16 (xiv) Honoraria received by the reporting individual.

17 (g) "Interested party" means a reporting individual, spouse,
18 minor child, or dependent child.

19 (h) "Internal revenue code" means the United States internal
20 revenue code of 1986.

21 (i) "Investment adviser" includes any investment adviser who
22 is generally involved in the role of an adviser in the management
23 or control of trusts.

24 (j) "Minor child" means a son or daughter of the reporting
25 individual who is under the age of 18.

1 (k) "Personal savings account" means a certificate of
2 deposit or any other form of deposit in a bank, savings and loan
3 association, credit union, or similar financial institution.

4 (l) "Qualified blind trust" means a trust in which a report-
5 ing individual, spouse, minor child, or dependent child has a
6 beneficial interest in the principal or income and which trust
7 meets the following requirements:

8 (i) The trustee and any other person designated in the trust
9 to perform fiduciary duties is a financial institution, attorney,
10 certified public accountant, broker, or other investment adviser
11 who meets all of the following requirements:

12 (A) Is independent of and not associated with an interested
13 party so that the trustee or other designated fiduciary cannot be
14 controlled or influenced in the administration of the trust by an
15 interested party.

16 (B) Is not and has not been an employee of or affiliated
17 with an interested party and is not a partner of, or involved in
18 a joint venture or other investment with, an interested party.

19 (C) Is not a relative of an interested party.

20 (ii) An officer or employee of the trustee or other person
21 designated in the trust to perform fiduciary duties meets all of
22 the following requirements:

23 (A) Is independent of and not associated with an interested
24 party so that the officer or employee cannot be controlled or
25 influenced in the administration of the trust by an interested
26 party.

1 (B) Is not a partner of, or involved in a joint venture or
2 other investment with, an interested party.

3 (C) Is not a relative of an interested party.

4 (iii) An asset transferred to the trust by an interested
5 party is free of any restriction with respect to its transfer or
6 sale by the trust.

7 (iv) The instrument that establishes the trust provides for
8 all of the following:

9 (A) The trustee, in the exercise of his or her authority and
10 discretion to manage and control the assets of the trust, shall
11 not consult or notify an interested party.

12 (B) The trust shall not contain an asset that an interested
13 party is prohibited from holding by law or regulation.

14 (C) The trustee shall promptly notify the reporting individ-
15 ual if the holdings of a particular asset transferred to the
16 trust by a reporting individual are disposed of or if the value
17 of the holding is less than \$1,000.00.

18 (D) The trustee or a designee of the trustee shall prepare
19 the trust tax return and the return and any information relating
20 to the return shall not be disclosed to an interested party.
21 This sub-subparagraph does not apply to trust income summarized
22 in appropriate categories necessary to complete an interested
23 party's tax returns.

24 (E) An interested party shall not receive a report on the
25 holdings and sources of income of the trust. This
26 sub-subparagraph does not apply to a report at the end of each
27 calendar quarter with respect to the total cash value of the

1 interest of the interested party in the trust, the net income or
2 loss of the trust, any reports necessary to enable an interested
3 party to complete an individual tax return required by law, or
4 any information required to be reported by a reporting individual
5 under section 4 or 5. A report allowed under this
6 sub-subparagraph shall not identify an asset or holding of the
7 trust.

8 (F) Except for a communication that solely consists of a
9 request for distributions of cash or other unspecified assets of
10 the trust, there shall be no direct or indirect communication
11 between a trustee and an interested party with respect to the
12 trust unless the communication is in writing and unless it
13 relates to 1 or more of the following, as applicable:

14 (I) To the general financial interest and needs of the
15 interested party including, but not limited to, an interest in
16 maximizing income or long-term capital gain.

17 (II) To the notification of the trustee of a law or regula-
18 tion subsequently applicable to an interested party that prohib-
19 its the interested party from holding an asset, which notifica-
20 tion directs that the asset not be held by the trust.

21 (III) To directions to the trustee to sell all of an asset
22 initially placed in the trust by an interested party that in the
23 determination of the reporting individual creates a conflict of
24 interest or the appearance of a conflict of interest due to the
25 subsequent assumption of duties by the reporting individual.

26 (G) The interested parties shall not attempt to obtain
27 information with respect to the holdings of the trust, including

1 an attempt to obtain a copy of any trust tax return filed or any
2 information relating to the trust tax return, except as otherwise
3 provided in this subdivision.

4 (m) "Relative" means an individual who is related to the
5 reporting individual within the fourth degree of consanguinity or
6 affinity. Relative includes the spouse or fiance or fiancée of
7 the reporting individual.

8 (n) "Report" means a financial disclosure report required to
9 be filed under this act.

10 (o) "Reporting individual" means an individual who is
11 required to file a report under this act.

12 (p) "Spouse" means the spouse of the reporting individual.

13 (q) "State official" means all of the following:

14 (i) The governor.

15 (ii) The lieutenant governor.

16 (iii) The attorney general.

17 (iv) The secretary of state.

18 (v) A state senator.

19 (vi) A state representative.

20 (vii) A justice of the supreme court.

21 (r) "Value" means a good faith estimate of the dollar value
22 if the exact value is not known or not easily obtainable by the
23 reporting individual.

24 (s) "Widely held investment fund" means a mutual fund, regu-
25 lated investment company, pension or deferred compensation plan,
26 or other investment fund, the assets of which are publicly traded
27 or are widely diversified.

1 Sec. 3. (1) Except as otherwise provided in this section,
2 before the expiration of 30 days after an individual becomes a
3 state official, that individual shall file with the secretary of
4 state a report that meets the requirements of this act. An indi-
5 vidual who becomes a state official and who in good faith expects
6 to perform the duties of that position or office for 60 days or
7 less is not required to file a report under this subsection. An
8 individual who is exempt from filing a report under this subsec-
9 tion shall file a sworn statement indicating his or her reasons
10 for not filing a report. The sworn statement is required to be
11 filed at the same time and in the same manner as a report is
12 required to be filed under this act.

13 (2) If an individual was a state official at any time during
14 the immediately preceding calendar year and performed the duties
15 of that position or office for more than 60 days in the calendar
16 year, that individual shall file with the secretary of state by
17 May 15 of the current calendar year a report that meets the
18 requirements of this act.

19 (3) If an individual is a candidate for state office, that
20 individual shall file with the secretary of state before the
21 expiration of 30 days after the filing deadline for candidacy
22 established in the Michigan election law, Act No. 116 of the
23 Public Acts of 1954, being sections 168.1 to 168.992 of the
24 Michigan Compiled Laws, a report that meets the requirements of
25 this act.

1 (4) This section does not apply to an individual who has
2 filed a report in the current calendar year as otherwise required
3 under this act.

4 (5) A reporting individual may request an extension of time
5 for filing a report for good cause as prescribed in rules promul-
6 gated pursuant to section 10. The secretary of state shall not
7 grant extensions to a reporting individual that exceed 90 days.

8 Sec. 4. (1) Except as otherwise provided in this act, a
9 report shall include a complete statement of all of the
10 following:

11 (a) The source, type, and amount or value of income other
12 than income reported under subdivision (b) or (c) received during
13 the preceding calendar year by the reporting individual if the
14 total income from that source equals \$200.00 or more during that
15 calendar year. A reporting individual is not required to report
16 under this subdivision the source, type, and amount or value of
17 income received as compensation from this state for his or her
18 employment as a state official.

19 (b) The source, date, and amount of honoraria received by
20 the reporting individual from any source if the total honoraria
21 received from that source equals \$200.00 or more during the pre-
22 ceding calendar year.

23 (c) The source, type, and amount or value of income that
24 consists of dividends, rents, interest, and capital gains
25 received during the preceding calendar year by the reporting
26 individual if the total income from that source equals \$200.00 or
27 more during that calendar year.

1 (d) The identity and value of any interest in property held
2 during the preceding calendar year by the reporting individual in
3 a trade or business, for investment, or for the production of
4 income if the property had a fair market value of \$1,000.00 or
5 more at the close of the preceding calendar year. A reporting
6 individual is not required to report a personal liability owed to
7 the reporting individual by a spouse or by a parent, child, or
8 sibling of the reporting individual or spouse. A reporting indi-
9 vidual is not required to report deposits aggregating \$5,000.00
10 or less in a personal savings account.

11 (e) The identity and value of each liability owed during the
12 preceding calendar year by the reporting individual if the amount
13 of the liability was \$10,000.00 or more at any time during the
14 preceding calendar year. A reporting individual is not required
15 to report any of the following under this subdivision:

16 (i) A liability owed by the reporting individual to a spouse
17 or to a parent, child, or sibling of the reporting individual or
18 spouse.

19 (ii) A mortgage that is secured by the personal residence of
20 the reporting individual or spouse.

21 (iii) A loan secured by a personal motor vehicle, household
22 furniture, or appliances if the loan does not exceed the purchase
23 price of the item that secures the loan.

24 (iv) A revolving charge account, if the outstanding liabil-
25 ity of the account is less than \$10,000.00 at the close of the
26 preceding calendar year.

1 (f) A brief description, the date, and value of a purchase,
2 sale, or exchange of real property or of stocks, bonds,
3 commodities, futures, or other forms of securities during the
4 preceding calendar year by the reporting individual that is equal
5 to an amount of \$1,000.00 or more. A reporting individual is not
6 required to report any of the following under this subdivision:

7 (i) The purchase, sale, or exchange of real property that is
8 used solely as a personal residence by the reporting individual
9 or spouse.

10 (ii) The purchase, sale, or exchange of property described
11 in this subdivision if that transaction occurred solely between
12 the reporting individual and spouse or dependent child.

13 (g) The identity of all positions held by the reporting
14 individual during the preceding calendar year as an officer,
15 director, trustee, partner, proprietor, representative, employee,
16 or consultant of a corporation, company, firm, partnership, or
17 other business enterprise; of a nonprofit organization; of a
18 labor organization; or of an educational or other institution. A
19 reporting individual is not required to report under this subdivi-
20 sion a position held in a religious, social, fraternal, or
21 political entity, or of a position solely of an honorary nature.

22 (h) A description, including the dates, parties, and terms,
23 of an agreement or arrangement by or with the reporting individ-
24 ual with respect to future employment, a leave of absence during
25 that individual's term of office, continuation of payments by a
26 former employer other than this state, or continuation of

1 participation in an employee welfare or benefit plan maintained
2 by a former employer.

3 (2) Instead of filing a report, a reporting individual may
4 file a copy of his or her federal tax form 1040 and related
5 schedules filed with the internal revenue service for the immedi-
6 ately preceding calendar year, if all the information required to
7 be filed under this act appears on that form and schedules.

8 (3) If the value of an interest in property that is required
9 to be reported under subsection (1)(d) is not ascertainable with-
10 out an appraisal, the reporting individual may provide in the
11 report any of the following information, as applicable:

12 (a) For real estate or a real estate partnership, the
13 reporting individual may list the date of purchase and the pur-
14 chase price.

15 (b) For interests in property other than property described
16 in subdivision (a), the reporting individual may list any of the
17 following, as applicable:

18 (i) The book value of a corporation whose stock is not pub-
19 licly traded.

20 (ii) The net worth of a business partnership.

21 (iii) The equity value of an individually owned business.

22 (iv) For any other property not listed in subparagraphs (i)
23 to (iii), any recognized indication of value.

24 (c) For interests in any property, the assessed value of the
25 item for tax purposes, adjusted to reflect the market value of
26 the item used for the assessment if the assessed value is
27 computed at less than 100% of the market value. Along with the

1 use of a valuation method under this subdivision, the reporting
2 individual shall attach a complete description of the method used
3 in determining the assessed value of the item.

4 Sec. 5. Except as otherwise provided in this act, a report-
5 ing individual shall include in a report all of the following
6 information:

7 (a) For a spouse, the source of income described in section
8 2(d)(i) and received during the preceding calendar year if the
9 total income from that source equals \$1,000.00 or more during
10 that calendar year. If the spouse is self-employed in business
11 or a profession, only the nature of the business or profession is
12 required to be reported under this subdivision.

13 (b) For a spouse, the source, date, and amount of honoraria
14 received from any source if the total honoraria received from
15 that source equals \$200.00 or more during the preceding calendar
16 year.

17 (c) For a spouse or dependent child, the information
18 required to be reported under section 4(1)(c).

19 (d) For a spouse or dependent child, the information
20 required to be reported under section 4(1)(d), (e), and (f).

21 Sec. 6. (1) A reporting individual shall include in a
22 report the information required to be filed under section 4 with
23 respect to the holdings of and the income from a trust or other
24 financial arrangement from which income is received by or with
25 respect to which a beneficial interest in principal or income is
26 held by the reporting individual, spouse, or dependent child.
27 The information required to be reported under this section is

1 subject to sections 4, 7, and 8. A reporting individual is not
2 required to report the information required in this subsection
3 for any of the following:

4 (a) A qualified blind trust.

5 (b) A trust that meets all of the following requirements:

6 (i) The trust was not created directly by the reporting
7 individual, spouse, or dependent child.

8 (ii) The reporting individual, spouse, and all dependent
9 children have no knowledge of the holdings or sources of income
10 of the trust.

11 (c) A widely held investment fund, if the reporting individ-
12 ual does not exercise control over and does not have the ability
13 to exercise control over the financial interests held by the
14 fund.

15 (2) A trust that does not meet the requirements for being a
16 qualified blind trust under this act may be amended to satisfy
17 those requirements. However, in the case of a trust instrument
18 that does not by its terms permit amendment, the trustee, the
19 reporting individual, and any other interested party or legal
20 representative of the interested party may agree in writing that
21 the trust shall be administered pursuant to the requirements of
22 this act relating to blind trusts.

23 (3) If a reporting individual has a beneficial interest in a
24 trust exempt from the reporting requirements under subsection (1)
25 or from meeting the requirements of subsection (2), the reporting
26 individual shall attach to a report filed under this act all of
27 the following information:

1 (a) The executed trust instrument, excluding the provisions
2 of the trust that relate to the testamentary disposition of the
3 trust assets.

4 (b) The identity and value of trust assets that were trans-
5 ferred to the trust by the reporting individual, spouse, minor
6 child, or dependent child. The value reported under this subdi-
7 vision may be by category as provided in section 7(2).

8 (c) The signed agreement described in subsection (2), if
9 any.

10 (4) A trustee of a qualified blind trust shall not knowingly
11 or negligently do any of the following:

12 (a) Disclose any information to an interested party with
13 respect to the trust that is prohibited from disclosure under
14 this section.

15 (b) Acquire any holding the ownership which is prohibited by
16 the trust instrument.

17 (c) Solicit advice from an interested party with respect to
18 the trust, which solicitation is prohibited by this section or
19 the trust agreement.

20 (d) Fail to file any document required under this section.

21 (5) A reporting individual shall not knowingly or negli-
22 gently do any of the following:

23 (a) Solicit or receive any information with respect to a
24 qualified blind trust of which he or she is an interested party
25 that is prohibited from disclosure under this act.

26 (b) Fail to file any document required by this section.

1 (6) A person who knowingly violates subsection (4) or (5) is
2 subject to a civil fine of \$10,000.00 or less. A person who
3 negligently violates subsection (4) or (5) is subject to a civil
4 fine of \$5,000.00 or less.

5 Sec. 7. (1) Except as otherwise provided in this section,
6 an amount or value reported under sections 4(1)(c) and 5(c) shall
7 be reported by category as follows:

8 (a) Less than \$1,000.00.

9 (b) \$1,000.00 or more but less than \$2,500.00.

10 (c) \$2,500.00 or more but less than \$5,000.00.

11 (d) \$5,000.00 or more but less than \$15,000.00.

12 (e) \$15,000.00 or more but less than \$50,000.00.

13 (f) \$50,000.00 or more but less than \$100,000.00.

14 (g) \$100,000.00 or more but less than \$1,000,000.00.

15 (h) \$1,000,000.00 or more.

16 (2) Except as otherwise provided for in this section, an
17 amount or value reported under sections 4(1)(d), (e), or (f) or
18 5(d) shall be reported by category as follows:

19 (a) Less than \$15,000.00.

20 (b) \$15,000.00 or more but less than \$50,000.00.

21 (c) \$50,000.00 or more but less than \$100,000.00.

22 (d) \$100,000.00 or more but less than \$250,000.00.

23 (e) \$250,000.00 or more but less than \$500,000.00.

24 (f) \$500,000.00 or more but less than \$1,000,000.00.

25 (g) \$1,000,000.00 or more.

1 (3) In lieu of indicating the category of amount or value of
2 any item contained in a report, a reporting individual may
3 indicate the exact dollar amount or value of the item.

4 Sec. 8. A report may omit any of the following:

5 (a) Information that is reported by the reporting individual
6 under the Michigan campaign finance act, Act No. 388 of the
7 Public Acts of 1976, being sections 169.201 to 169.282 of the
8 Michigan Compiled Laws.

9 (b) An item otherwise required to be reported under
10 section 5(d) about which all of the following are true, as certi-
11 fied by the reporting individual:

12 (i) The item represents the sole financial interest and
13 responsibility of a spouse or dependent child of which the
14 reporting individual has no actual knowledge.

15 (ii) The item is not in any way, past or present, derived
16 from the income, assets, or activities of the reporting
17 individual.

18 (iii) The reporting individual does not derive, or expect to
19 derive, financial benefit from the item.

20 (c) An item otherwise required to be reported under section
21 5 that concerns a spouse who is living separate and apart from
22 the reporting individual with the intention of terminating the
23 marriage or maintaining a legal separation.

24 (d) An item that concerns income or obligations of the
25 reporting individual arising from the dissolution of his or her
26 marriage or a permanent legal separation from a spouse.

1 Sec. 9. (1) A reporting individual who files a report more
2 than 30 days after the date the report is required to be filed
3 under section 3 or more than 30 days after the date of an exten-
4 sion given under section 3, if any, shall pay a filing fee of
5 \$200.00 to the secretary of state. The secretary of state shall
6 credit all fees collected under this section into the general
7 fund of this state.

8 (2) The secretary of state may waive the filing fee under
9 this section for good cause as prescribed in rules promulgated
10 pursuant to section 10.

11 Sec. 10. The secretary of state or his or her designee
12 shall do all of the following:

13 (a) Prepare and make available appropriate forms and
14 instructions for the reports required by this act.

15 (b) Receive reports required by this act.

16 (c) Make available for public use a report filed under this
17 act within 30 days after the report is filed as provided in the
18 freedom of information act, Act No. 442 of the Public Acts of
19 1976, being sections 15.231 to 15.246 of the Michigan Compiled
20 Laws.

21 (d) Promulgate rules and issue declaratory rulings to imple-
22 ment this act pursuant to the administrative procedures act of
23 1969, Act No. 306 of the Public Acts of 1969, being sections
24 24.201 to 24.328 of the Michigan Compiled Laws.

25 (e) Receive complaints and conduct investigations as may be
26 necessary to determine if there is reason to believe a violation

1 of this act occurred. Investigations shall be pursuant to the
2 procedures set forth in Act No. 306 of the Public Acts of 1969.

3 Sec. 11. (1) A citizen of this state may file a complaint
4 with the secretary of state alleging a violation of this act.
5 The secretary of state, upon receipt of a complaint, shall inves-
6 tigate the allegations as provided in section 10.

7 (2) If the secretary of state, upon investigation, deter-
8 mines that there is reason to believe a violation of this act
9 occurred, the secretary of state shall forward the results of
10 that investigation to the attorney general for enforcement of
11 this act.

12 Sec. 12. (1) The attorney general shall enforce this act
13 against an individual who violates this act.

14 (2) A default in the payment of a fee or a civil fine
15 ordered under this act or an installment of a fine may be reme-
16 died by any means authorized under the revised judicature act of
17 1961, Act No. 236 of the Public Acts of 1961, being sections
18 600.101 to 600.9947 of the Michigan Compiled Laws.

19 Sec. 13. An individual who knowingly falsifies or knowingly
20 fails to file a report required by this act is liable for a civil
21 fine of \$10,000.00 or less.