

HOUSE BILL No. 6535

September 19, 2006, Introduced by Rep. Huizenga and referred to the Committee on Commerce.

A bill to regulate state private foundations; to prescribe standards for determining the intent of donors to state private foundations; to provide for reporting of financial and other information by state private foundations; to prescribe standards of conduct and administration of state private foundations and to prohibit certain actions; to provide for enforcement, investigation, and promulgation of rules by the attorney general; and to provide remedies for violations.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "charitable foundations accountability act".

3 Sec. 3. (1) As used in this act:

1 (a) "Administrative expenses" means either of the following:

2 (i) Except as provided in subparagraph (ii), expenses incurred
3 by a state private foundation other than grants for charitable
4 purposes.

5 (ii) If a state private foundation is a private operating
6 foundation for purposes of federal income tax, expenses other than
7 grants or expenditures directly related to carrying out the
8 foundation's charitable works that qualify the foundation for
9 private operating foundation status.

10 (b) "Annual report" means the charitable asset consumption
11 report required under section 21.

12 (c) "Board" means the board of directors or board of trustees
13 of a state private foundation and its members.

14 (d) "Compensation" means the entire economic benefit given by
15 a state private foundation to a fiduciary, employee, or contractor
16 for services provided to or on behalf of the state private
17 foundation. Compensation includes the fair market value of goods,
18 services, facilities, business opportunities, and other things of
19 value given to or placed at a person's disposal, including, but not
20 limited to, expense accounts, fringe benefits, and other similar
21 benefits.

22 (e) "Director" and "trustee" have the same meaning.

23 (f) "Fiduciary" means any of the following:

24 (i) With respect to a trust, foundation, or corporation that is
25 not a state private foundation, a person that is subject to
26 obligations imposed under this act, under other applicable state or
27 federal law, or under the common law of charitable trusts,

1 concerning fiduciaries of charitable trusts.

2 (ii) With respect to a state private foundation, any of the
3 following:

4 (A) An officer, director, trustee, or member of a committee
5 with board-delegated authority of the state private foundation.

6 (B) A person acting on behalf of the state private foundation
7 who has the capacity to exert substantial influence over the
8 determination whether the foundation awards a grant or grants or to
9 make recommendations to final decision makers about those awards.

10 (C) A person acting on behalf of the state private foundation
11 who has the capacity to exert substantial influence over the
12 affairs of the state private foundation.

13 (D) A person who participates in decisions of the foundation
14 regarding compensation, contracts, or investments in amounts of
15 \$75,000.00 or more.

16 (E) A person who is a fiduciary of or who is assigned
17 fiduciary obligations of due care, loyalty, good faith, or
18 obedience for the state private foundation under other applicable
19 law.

20 (g) "Independent person" means a person who is not an
21 interested person or a state disqualified person.

22 (h) "Interested person" means either of the following:

23 (i) A person under contract to be compensated by or currently
24 being compensated by a state private foundation or on behalf of a
25 state private foundation for services rendered within the previous
26 12 months, whether as a full- or part-time employee, independent
27 contractor, or other service provider, excluding any reasonable

1 compensation paid to a director or trustee solely for services
2 rendered in the capacity of director or trustee.

3 (ii) A brother, sister, ancestor, descendant, spouse, brother-
4 in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law,
5 or father-in-law of a person described in subparagraph (i).

6 (i) "Material donor" means a person who contributed an amount
7 equal to or greater than 20% of the state private foundation's
8 assets in its first year of existence or who, after the first year
9 of the state private foundation, contributed an amount of 20% or
10 more of the fair market value of the state private foundation's
11 assets, as of the date of the gift.

12 (j) "Material facts" that must be disclosed to the attorney
13 general under section 21 in connection with a transaction involving
14 an interested person include, but are not limited to, all of the
15 following:

16 (i) A description of the services or goods provided to or by
17 the state private foundation in the transaction.

18 (ii) The price for the services or goods paid or owed by or to
19 the state private foundation.

20 (iii) The estimated fair market value of the goods or services
21 and the method used to estimate fair market value.

22 (iv) The benefit the state private foundation receives in the
23 transaction.

24 (v) Whether the board of the state private foundation approved
25 the transaction or whether a committee with board-delegated
26 authority approved the transaction.

27 (vi) Whether the interested person participated in any fashion

1 in any deliberation or vote to approve the transaction.

2 (vii) The factual basis of the board's determination to approve
3 the transaction.

4 (viii) Any disclosures made to the board by the interested
5 person concerning the transaction.

6 (ix) A description of the steps taken to investigate
7 alternative transactions and of any alternatives considered by the
8 board or committee and a statement as to why any alternatives
9 considered were not adopted.

10 (k) "Organization" means a corporation, limited liability
11 company, partnership, unincorporated association, or any other
12 legal entity.

13 (l) "Pattern of giving" means the character, amount, size in
14 relation to other gifts, and intended purpose of individual
15 charitable gifts made by a donor during the donor's lifetime or
16 described in testamentary documents or other documents of the donor
17 or made by a state private foundation or other charitable
18 organization if the donor agreed or assented to the gift while
19 serving as a trustee or officer of that organization.

20 (m) "Person" means an individual or an organization.

21 (n) Except as provided in subsection (2) or otherwise provided
22 in this act, "prohibited transaction" includes any of the
23 following:

24 (i) Self-dealing, as defined in section 4941 of the internal
25 revenue code, 26 USC 4941.

26 (ii) A transaction between a state private foundation and a
27 state disqualified person, including, but not limited to, accepting

1 or participating in the authorization of a loan, lease, or other
2 economic benefit by the state private foundation to a state
3 disqualified person.

4 (iii) A vote that violates a state private foundation's proxy
5 voting policy.

6 (iv) Voting a proxy in a manner that promotes the personal or
7 private interest of a state disqualified person.

8 (v) Participating on behalf of a state private foundation in a
9 grant determination involving another organization in which the
10 participant is a fiduciary or has a substantial interest.

11 (vi) Participating on behalf of a state private foundation in
12 considering or awarding a contract or other economic benefit to
13 another organization in which the participant is a fiduciary or has
14 a substantial interest.

15 (o) "Restrictions" on a gift means limits or conditions on the
16 use of a gift intended by a donor that arise from a donor's express
17 statements, a contract or other written instrument, representations
18 by a recipient of a charitable gift to induce the gift, a donor's
19 pattern of giving, a source recognized under another state or
20 federal law, or any other source.

21 (p) "State disqualified person" includes any of the following:

22 (i) A disqualified person, as that term is defined in section
23 4958 of the internal revenue code, 26 USC 4958.

24 (ii) An employee who has received economic benefits from or on
25 behalf of a state private foundation of more than \$75,000.00 in the
26 preceding 12 months or who is contractually entitled to receive
27 more than \$75,000.00.

1 (iii) A contractor of a state private foundation who receives
2 more than \$75,000.00 or whose compensation is tied to the
3 foundation's financial performance.

4 (iv) An organization that is distinct from a state private
5 foundation if any of the following are met:

6 (A) Any fiduciary of the state private foundation has a
7 substantial interest as an owner, stockholder, creditor, or partner
8 of that organization or an affiliate of that organization.

9 (B) Any fiduciary of the state private foundation serves as
10 officer or other employee of that organization or an affiliate of
11 that organization.

12 (C) Any fiduciary of the state private foundation has received
13 or is contractually entitled to receive payments as an independent
14 contractor from that organization or an affiliate of that
15 organization.

16 (v) A person who has substantial authority on behalf of a
17 state private foundation to determine whether or not to award a
18 grant to a charitable organization or to make a recommendation on a
19 grant application to the final decision makers of the foundation.

20 (q) "State excess benefit transaction" means a transaction in
21 which a state private foundation directly or indirectly provides an
22 economic benefit to or for the use of any state disqualified person
23 and the value of that economic benefit exceeds the fair market
24 value of the goods, services, or other consideration received by
25 the state private foundation in exchange for that economic benefit.
26 The term does not include a transaction that meets all of the
27 following:

1 (i) The state private foundation directly provides an economic
2 benefit to a state disqualified person in exchange for specific
3 goods, services, or other consideration.

4 (ii) The value of the economic benefit provided by the state
5 private foundation does not exceed the fair market value of the
6 specific consideration received by the state private foundation.

7 (iii) The state private foundation clearly indicates that it is
8 providing the economic benefit in exchange for that specific
9 consideration at the time it provides the economic benefit.

10 (r) "State private foundation" means a charitable organization
11 that is exempt from taxation under section 501 of the internal
12 revenue code, 26 USC 501, as a private foundation and meets both of
13 the following:

14 (i) Is incorporated or otherwise organized, formed, or created
15 under the laws of this state or has received gifts from 1 or more
16 material donors in this state.

17 (ii) At any time during its fiscal year, holds total assets
18 whose fair market value is more than \$7,500,000,000.00.

19 (s) "State qualifying distribution" means an amount awarded as
20 a grant for charitable purposes. The term does not include
21 administrative expenses or compensation to a fiduciary of a state
22 private foundation.

23 (t) "Substantial interest" in an organization means an
24 interest as any of the following:

25 (i) Partner.

26 (ii) Owner of 10% or more of the ownership interests in the
27 entity or owner of an ownership interest that has a fair market

1 value of more than \$50,000.00.

2 (iii) A bondholder or creditor whose interest has a fair market
3 value of more than \$50,000.00.

4 (iv) An employee or contractor who receives compensation or has
5 a contractual right to receive compensation of more than \$50,000.00
6 for services rendered in the preceding 12 months.

7 (v) A state disqualified person with respect to that
8 organization.

9 (2) As used in this act, "prohibited transaction" does not
10 include any of the following:

11 (a) A lawful action of the board or authorized committee of a
12 state private foundation fixing reasonable compensation of a
13 fiduciary, officer, employee, or contractor.

14 (b) A transaction that is part of a public or charitable
15 program of the state private foundation if the transaction meets
16 both of the following:

17 (i) Is approved or authorized by the state private foundation
18 in good faith.

19 (ii) Results in a benefit to 1 or more state disqualified
20 persons solely because the state disqualified person is in the
21 class of uncertain and indefinite persons intended to be benefited
22 by the public or charitable program.

23 (c) A transaction between a state private foundation and a
24 state disqualified person of which the state disqualified person
25 has no actual knowledge, if the transaction does not exceed
26 \$25,000.00 and the state disqualified person does not receive more
27 than \$25,000.00 in any 12-month period from the state private

1 foundation.

2 Sec. 4. (1) This act does not modify the requirements of any
3 other statute applicable to charitable trusts, foundations, or
4 corporations, including, but not limited to, any of the following:

5 (a) 1915 PA 280, MCL 554.351 to 554.353.

6 (b) The supervision of trustees for charitable purposes act,
7 1961 PA 101, MCL 14.251 to 14.266.

8 (c) 1965 PA 169, MCL 450.251 to 450.253.

9 (d) The charitable trustees powers act, 1971 PA 78, MCL 14.271
10 to 14.287.

11 (e) The charitable organizations and solicitations act, 1975
12 PA 169, MCL 400.271 to 400.294.

13 (f) The uniform management of institutional funds act, 1976 PA
14 157, MCL 451.1201 to 451.1210.

15 (g) The nonprofit corporation act, 1982 PA 162, MCL 450.2101
16 to 450.3192.

17 (2) General principles of law and equity applicable to
18 charitable trusts, foundations, or corporations supplement the
19 provisions of this act.

20 (3) A state private foundation shall not adopt articles of
21 incorporation or bylaws that contain, or amend its articles or
22 bylaws to contain, any provision that is inconsistent with or
23 contrary to this act.

24 Sec. 5. (1) A state private foundation shall have a board of
25 directors or board of trustees. The board is responsible for
26 establishing policy, managing the assets, and conducting the
27 affairs of the state private foundation.

1 (2) The board of a state private foundation shall consist of
2 at least 25 individuals. The composition of the board shall meet
3 all of the following:

4 (a) At most 12 and not more than 49% of the directors are
5 interested persons.

6 (b) None of the directors serve as fiduciary of an
7 organization that meets any of the following:

8 (i) Has applied for a grant of more than \$50,000.00 from the
9 state private foundation within 1 year preceding the director's
10 appointment.

11 (ii) Has a grant application requesting more than \$50,000.00
12 currently pending with the state private foundation.

13 (iii) Has received a grant of more than \$50,000.00 from the
14 state private foundation within the 3 years preceding the
15 director's appointment.

16 (c) At least 5 and not fewer than 20% of the directors are
17 currently licensed by the Michigan board of accountancy and not
18 more than 40% of those persons are interested persons. The governor
19 has the right but not the obligation to select 1 independent
20 director in this classification.

21 (d) At least 3 and not fewer than 15% of the directors are
22 active members of the state bar of Michigan, and not more than 33%
23 of those persons are interested persons. The governor has the right
24 but not the obligation to select 1 independent director in this
25 classification.

26 (3) The term of office of a director of a state private
27 foundation shall be 4 years or less, and the foundation shall

1 stagger the terms so that the terms of at least 6 directors expire
2 each year. A state private foundation is not required to shorten
3 the term of any director serving on the effective date of this act,
4 but the state private foundation shall increase the number of
5 directors as necessary to permit the election or appointment of a
6 sufficient number of additional directors to satisfy the
7 requirements of this section.

8 (4) A state private foundation in existence on the effective
9 date of this act shall confirm in writing that it is in compliance
10 with this section to the attorney general within 90 days after the
11 effective date of this act. Beginning in the first calendar year
12 after the effective date of this act, each state private foundation
13 shall confirm in writing that it is in compliance with this section
14 to the attorney general. In addition, a state private foundation
15 shall notify the attorney general within 10 days of any
16 noncompliance with this section that continues for more than 7
17 days.

18 (5) The attorney general may petition a court for an
19 appropriate order to cure any noncompliance with this section,
20 including, but not limited to, an order increasing the number of
21 directors or appointing specific individuals to the board to meet
22 the requirements of this section.

23 Sec. 7. (1) At least 15 and not fewer than 60% of the members
24 of the board of a state private foundation, a majority of whom are
25 not interested persons, constitute a quorum for a meeting of the
26 board.

27 (2) The board by majority vote of the directors then in office

1 may delegate the management of specific activities of the state
2 private foundation to a committee if all of the following are met:

3 (a) The committee manages the activities or exercises the
4 powers of the state private foundation subject to the authority and
5 direction of the board.

6 (b) The board requires reports of the activities of each
7 committee at least quarterly and reviews and approves or
8 disapproves those reports and activities.

9 (c) The state private foundation does not engage contractors
10 to assist in performing committee functions unless the committee
11 approves the engagement and the contractor is the agent of and
12 reports to the committee only.

13 (3) A state private foundation shall permanently retain
14 preparatory materials, agendas, and detailed minutes of meetings of
15 the board and any committee with board-delegated powers.

16 Sec. 9. (1) A state private foundation shall make
17 distributions in a manner consistent with all restrictions and
18 conditions on the use of charitable assets intended by donors of
19 those assets. A state private foundation's failure to use a donor's
20 gift, including appreciation and undistributed income attributable
21 to that gift, in conformity with restrictions and conditions
22 intended by the donor constitutes a breach of fiduciary by the
23 state private foundation, its trustees, and its officers.

24 (2) A state private foundation shall not release or otherwise
25 modify any restriction or condition on the use of charitable assets
26 intended by a donor, unless 1 of the following applies:

27 (a) A court of this state issues an order in a proceeding to

1 which the state private foundation and attorney general are parties
2 releasing or modifying the restriction or condition on the basis of
3 or an affirmative demonstration that it is impossible or
4 impracticable to comply with the restriction or condition.

5 (b) The foundation receives the express, knowing, written,
6 personal consent of the donor to release or modify the restriction
7 or condition.

8 Sec. 11. All of the following rebuttable presumptions of
9 intent to restrict or condition the use of a charitable gift to a
10 state private foundation apply in any action to enforce, determine,
11 release, or modify a restriction or condition on the use of a
12 charitable gift intended by a donor:

13 (a) It is presumed that a donor intends that all appreciation
14 and income attributable to his or her original gift is used
15 consistently with any restriction or condition applicable to the
16 original gift and in accordance with the donor's intended purposes.

17 (b) If a testamentary document or other instrument relating to
18 a gift to a state private foundation, or the articles of
19 incorporation, articles of association, or other organizational
20 document of the state private foundation, does not specify an
21 identifiable charitable purpose or purposes for which the
22 foundation must use its assets, but instead provides only that the
23 foundation's assets be used for broad purposes such as
24 philanthropy, charity, welfare, education, religion, or science, it
25 is presumed that a material donor intends that the foundation use
26 the assets in a manner that is consistent with his or her pattern
27 of giving. Clear and convincing evidence of any of the following

1 may be introduced in the action to support or rebut the presumption
2 described in this subdivision:

3 (i) The existence or absence of any established pattern of
4 giving by the material donor.

5 (ii) Gifts made with the assent of the material donor by the
6 state private foundation while the material donor is or was a
7 director or has or had the capacity to exert substantial control
8 over the grant-making activity of the state private foundation.

9 (iii) Express language in a testamentary document or other
10 separate gift instrument that establishes an intent to include or
11 exclude a specific charitable purpose otherwise present in the
12 material donor's pattern of giving.

13 (c) It is presumed that each donor intends or intended that
14 the state private foundation will use his or her charitable gift
15 and proceeds from the investment of that gift for charitable
16 purposes and will not unreasonably retain that gift and proceeds
17 from the investment of that gift, whether as original principal,
18 net appreciation, or undistributed income.

19 (d) The presumption described in section 15(3).

20 Sec. 15. (1) A state private foundation shall not make any
21 expenditure for any administrative purpose unless it is reasonable.

22 (2) A state private foundation shall reasonably limit its
23 aggregate annual administrative expenses.

24 (3) A state private foundation shall not unreasonably amass
25 assets, whether as principal, appreciation of principal, or
26 undistributed income. For purposes of this subsection, there is a
27 rebuttable presumption that state qualifying distributions are

1 unreasonable if the state private foundation has made state
2 qualifying distributions of less than 7.5% of the average fair
3 market value of its assets during the fiscal year.

4 Sec. 17. (1) A state private foundation shall not provide
5 compensation to any fiduciary or employee unless both of the
6 following are met:

7 (a) The state private foundation determines that employment of
8 the fiduciary or employee is necessary to the accomplishment of the
9 state private foundation's charitable purposes.

10 (b) The compensation is reasonable in relation to the services
11 actually provided by the fiduciary or employee on behalf of the
12 state private foundation. Compensation paid for like services by
13 other tax-exempt private foundations is a factor in assessing the
14 reasonableness of compensation under this subdivision.

15 (2) An individual shall not participate in any vote or
16 deliberation of the board or any committee regarding that
17 individual's compensation.

18 (3) A state private foundation shall not award compensation to
19 any individual that will exceed \$75,000.00 annually unless it
20 complies with all of the following:

21 (a) The foundation determines that the employment is necessary
22 for the accomplishment of the state private foundation's charitable
23 purpose.

24 (b) The amount of the compensation is set by a compensation
25 committee composed in accordance with this act or by a different
26 board committee, other than the finance committee, that meets all
27 of the following requirements:

1 (i) The committee includes at least 9 individuals who are
2 appointed by the board and do not receive any compensation from the
3 state private foundation in excess of any compensation received by
4 members of the board for service as a director.

5 (ii) Except for members serving as independent directors for
6 the state private foundation, the committee is composed entirely of
7 individuals who have no economic interest or relationship with a
8 fiduciary, an interested person, or any separate entity with which
9 the fiduciary or interested person has a substantial interest as
10 owner, shareholder, or creditor.

11 (iii) The committee does not include the president or chief
12 executive officer, the treasurer or chief financial officer, or any
13 other member of the staff of the foundation.

14 (c) A majority of the committee votes to approve the total
15 compensation package and votes, separately, to approve base salary
16 and to approve any, other compensation or benefits in addition to
17 base salary that in the previous complete year contributed or in
18 the current year will contribute or is substantially likely to
19 contribute either more than \$10,000.00 or more than 5% to the
20 individual's compensation. The factors described in this
21 subdivision may include, but are not limited to, any of the
22 following:

23 (i) Incentives based on financial performance, each of which
24 must be clearly defined.

25 (ii) Deferred compensation.

26 (iii) Taxable fringe benefits.

27 (iv) Contributions to pension plans or similar retirement

1 benefits.

2 (v) Any taxable expense that exceeds \$5,000.00.

3 (vi) Any type of retention bonus.

4 (vii) Base salary.

5 (4) A state private foundation's articles of incorporation or
6 bylaws must prohibit committee members from disclosing any member's
7 vote on any aspect of any compensation agreement to any individual
8 not on the committee.

9 (5) A state private foundation shall not approve any
10 compensation to a contractor who is an interested person with
11 regard to the state private foundation, or approve payments of
12 \$75,000.00 or more in any fiscal year to any other contractor,
13 unless the committee determines that the goods or services provided
14 by that contractor are necessary and that the compensation is
15 reasonable under the circumstances.

16 (6) A consultant or contractor engaged to assist in a state
17 private foundation's compensation decisions shall be engaged by and
18 report solely to the committee described in this section.

19 Sec. 19. (1) A state private foundation shall do the
20 following:

21 (a) Prepare annual financial statements using generally
22 accepted accounting principles that are audited in conformity with
23 generally accepted auditing standards by an independent certified
24 public accountant licensed or certified by the Michigan board of
25 accountancy. For any nonaudit services performed by the accounting
26 firm conducting the audit, the accounting firm and its individual
27 auditors shall adhere to the standards for auditor independence set

1 forth in the latest revision of the government auditing standards
2 issued by the comptroller general of the United States. The
3 attorney general may prescribe additional standards for auditor
4 independence in the performance of nonaudit services, including
5 standards different from those set forth in the comptroller
6 general's government auditing standards.

7 (b) Make its audited financial statements available for
8 inspection by the attorney general and by members of the public
9 within 9 months after the close of the fiscal year to which the
10 statements relate.

11 (c) Make its annual audited financial statements available to
12 the public in the same manner that is prescribed for IRS form 990
13 under section 6104(d) of the internal revenue code, 26 USC 6104,
14 and any associated regulations.

15 (d) Have an audit committee appointed by the board that meets
16 all of the following:

17 (i) Has at least 9 members who are appointed by the board and
18 do not receive any compensation from the state private foundation
19 in excess of any compensation received by members of the board for
20 service on the board.

21 (ii) Does not include any interested person except for
22 independent directors of the state private foundation.

23 (iii) Includes at least 3 independent persons who are currently
24 licensed or certified by the Michigan board of accountancy and who
25 are not state disqualified persons with respect to the state
26 private foundation; are not accountants, auditors, or attorneys
27 engaged by the foundation within the previous 3 years; and are not

1 fiduciaries of the foundation.

2 (iv) Includes at least 3 independent members of the state
3 private foundation's board.

4 (v) Is separate from and contains no more than 3 members of
5 the finance committee of the state private foundation. An
6 individual described in this subparagraph is not eligible to serve
7 as chair of either the finance or audit committee.

8 (2) The audit committee described in this section is
9 responsible for recommending to the board the retention and
10 termination of an independent auditor and may negotiate the
11 independent auditor's compensation on behalf of the state private
12 foundation. The board may reject the audit committee's
13 recommendation of an independent auditor under this subsection only
14 for good cause. The audit committee shall confer with the auditor
15 to satisfy each member of the committee that the financial affairs
16 of the state private foundation are in order, shall review and
17 determine whether to accept the audit, shall assure that any
18 nonaudit services performed by the auditing firm conform with
19 standards for auditor independence, and shall approve performance
20 of any nonaudit services by the auditing firm.

21 (3) A state private foundation shall change its independent
22 auditor at least every 5 years and shall not engage a former
23 auditor for at least 3 years.

24 (4) The audit committee described in this section shall
25 establish procedures for accepting and investigating complaints
26 from anonymous or identified persons regarding possible violations
27 of formal policies of the state private foundation or of violations

1 of this act or other applicable law. The audit committee shall
2 promptly report apparent violations of the law to appropriate law
3 enforcement agencies and to the attorney general.

4 (5) For each member of an audit committee described in this
5 section, a state private foundation shall within 60 days of the
6 commencement of his or her service furnish to the attorney general
7 a summary of that individual's experience and training relevant to
8 serving on the audit committee.

9 Sec. 21. (1) A state private foundation shall annually file a
10 charitable asset consumption report with the department of attorney
11 general. The state private foundation's report shall include all of
12 the following:

13 (a) The name and federal employer identification number of the
14 foundation.

15 (b) A mailing address for the state private foundation's main
16 office and for the foundation's registered agent.

17 (c) The total fair market value of all of the foundation's
18 assets for the most recent completed fiscal year, including the
19 highest and average fair market value of those assets during the
20 reporting period and the preceding 3 reporting periods.

21 (d) The total revenue of the foundation for the reporting
22 year, as reported in the foundation's internal revenue service form
23 990-PF.

24 (e) The foundation's total distributions for the preceding
25 reporting period on a cash basis, including, but not limited to,
26 any federal and state qualifying distributions.

27 (f) Any information required by this act concerning material

1 donors, including, but not limited to, the following information:

2 (i) A description of the general pattern of giving of each
3 material donor.

4 (ii) A detailed schedule supporting the state private
5 foundation's compliance in the preceding year with each material
6 donor's restrictions on use of charitable gifts, including, but not
7 limited to, the foundation's uses of appreciation and income.

8 (g) A list and classification of all directors of the
9 foundation that demonstrate the foundation's compliance with
10 section 7.

11 (h) A separate schedule listing each director and officer of
12 the foundation and any other employee of the foundation who
13 receives more than \$75,000.00 in annual compensation. The schedule
14 shall include all of the following for each individual listed:

15 (i) His or her name.

16 (ii) His or her city, village, or township; state or province;
17 and country of residence.

18 (iii) Each other organization of which he or she serves as
19 fiduciary.

20 (iv) Any payments he or she accepted during the reporting
21 period from any charitable organization for speaking, consulting,
22 or performing any other service.

23 (i) The state private foundation's total administrative
24 expenses for the last year as reported in the foundation's internal
25 revenue service form 990-PF.

26 (j) For each director and officer of the foundation, and for
27 each employee and contractor receiving compensation of more than

1 \$75,000.00, a schedule of all payments made by or on behalf of the
2 state private foundation to that director, officer, employee, or
3 contractor that includes all of the following:

4 (i) The name of the director, officer, employee, or contractor.

5 (ii) The total compensation paid to that person.

6 (iii) The person's base compensation, if applicable.

7 (iv) A description of any reimbursement paid to the person for
8 travel or other expenses.

9 (v) Deferred compensation or any other accrued economic
10 benefit paid or payable to the person.

11 (vi) Any other payment or compensation paid to the person,
12 including, but not limited to, bonuses, incentive payments, or
13 unpaid loans.

14 (k) A schedule that describes any grants or distributions to
15 charitable organizations by the state private foundation,
16 classified by the charitable purpose and interest primarily
17 benefiting from each grant, and including the geographic location
18 by state and country of expected charitable and noncharitable
19 economic benefits.

20 (l) A schedule of any transactions between the state private
21 foundation and any interested person that includes the material
22 facts associated with each transaction.

23 (m) A schedule of each organization whose activities receive
24 more than 50% of their total funding from or are substantially
25 controlled by the state private foundation.

26 (2) A state private foundation shall file its annual report
27 and any other reports and information required under this act by

1 July 15 of each year if its books are maintained on a calendar year
2 basis, or by the fifteenth day of the seventh month following the
3 close of its fiscal year if its books are maintained on a fiscal
4 year basis. However, if a state private foundation has received an
5 extension from the internal revenue service for the filing of its
6 internal revenue service form 990-PF for the reporting year, the
7 state private foundation may obtain an extension from the
8 department of attorney general to file any information required
9 under this act that is derived from that internal revenue service
10 form. A state private foundation may receive only 1 extension under
11 this subsection for a reporting year.

12 (3) Each individual who served as a director or officer of a
13 state private foundation during the reporting period for the annual
14 report shall certify that he or she has read all parts of the
15 report and shall affirm that, to the best of his or her knowledge
16 after reasonably diligent inquiry, the information in the annual
17 report is complete and accurate.

18 (4) If requested by the attorney general, a state private
19 foundation shall furnish additional information and documentation
20 to the attorney general, including, but not limited to, any of the
21 following:

22 (a) Minutes or records of the board or any committee related
23 to specific actions or decisions.

24 (b) Correspondence to and from the internal revenue service or
25 any other federal, state, local, foreign, or international law
26 enforcement agency.

27 (c) Records relating to handling and consideration of grant

1 applications.

2 (5) A state private foundation may request confidential
3 treatment of any information provided under subsection (4) and the
4 attorney general may grant the request if the foundation
5 demonstrates that release of the information would cause the
6 foundation harm, would imperil the safety or privacy of employees
7 of the foundation or others, or would embarrass innocent parties
8 for reasons unrelated to operation of the foundation. A state
9 private foundation requesting confidential treatment of an entire
10 document or a compilation of information under this subsection must
11 demonstrate that specific information in the document or
12 compilation is confidential or, if seeking protection of an entire
13 document, that redaction of names or other sensitive information
14 does not adequately protect the interest in question.

15 Sec. 23. (1) A state private foundation shall make any
16 information necessary to apply for any grant consistent with the
17 state private foundation's charitable purpose that the state
18 private foundation anticipates awarding during the foundation's
19 annual application period readily available and accessible to the
20 public.

21 (2) A state private foundation shall provide a copy of the
22 information required in subsection (1) to the attorney general
23 annually and shall provide any information related to particular or
24 specific programs or goals for which the state private foundation
25 will be seeking applications during that year.

26 (3) A state private foundation shall retain a copy of each
27 approved and disapproved grant application, and any supporting

1 memoranda and other writings related to the determination on the
2 application, for at least 5 years and make those documents
3 available to the department of attorney general on request.

4 (4) If a state private foundation disapproves all or any part
5 of a grant application, the foundation shall provide the grant
6 applicant with a summary of the basis for disapproving the grant
7 application within 30 days after the foundation's disapproval.

8 Sec. 25. (1) A state private foundation shall not do any of
9 the following without first obtaining an order from a probate court
10 of this state approving of that action:

11 (a) Make a distribution or engage in a transfer of assets for
12 a purpose other than a proper charitable purpose or to avoid
13 complying with this act or other state law.

14 (b) Move or title substantial assets of the foundation out of
15 this state.

16 (c) Relocate the principal place of business of the foundation
17 out of state.

18 (d) Make a distribution, grant, or transfer of assets in any
19 fiscal year if the total value of those assets exceeds 10% of the
20 fair market value of the foundation's assets.

21 (2) After investigation, the attorney general may stipulate to
22 the entry of an appropriate order by a probate court under
23 subsection (1).

24 (3) Whether or not an action described in subsection (1) is
25 contested, the court must affirmatively find that the action is in
26 the best interest of the public and consistent with all
27 restrictions and conditions intended by donors, and that the state

1 private foundation provided notice to the attorney general at least
2 45 days before any hearing related to the action, or within any
3 shorter period to which the attorney general agreed in writing.

4 Sec. 27. (1) A state private foundation shall pay an annual
5 oversight fee to this state. The amount of the oversight fee is an
6 amount equal to the attorney general's actual costs and expenses
7 for reviewing, monitoring, and ensuring and verifying compliance by
8 the state private foundation with this act and any other legal
9 requirements, or \$50,000.00, whichever is higher.

10 (2) Fees collected under this section shall be credited to the
11 general fund of the state to be appropriated by the legislature to
12 the department of attorney general for the oversight activities
13 described in subsection (1).

14 Sec. 29. (1) Each fiduciary or contractor who is a state
15 disqualified person of a state private foundation owes a heightened
16 duty of loyalty to the foundation and is required to subordinate
17 his or her personal interests and those of his or her friends,
18 business associates, family members, and any other organization to
19 the interests and legal obligations of the foundation.

20 (2) A fiduciary or contractor who is a state disqualified
21 person of a state private foundation shall not participate in a
22 prohibited transaction with the state private foundation.

23 (3) A state disqualified person shall not participate in a
24 state excess benefit transaction.

25 (4) Each state private foundation shall adopt a conflict of
26 interest policy for state disqualified persons. All of the
27 following apply to the policy:

1 (a) The policy shall prohibit a state disqualified person from
2 engaging in any prohibited transactions as defined in this act and
3 may add additional prohibitions or requirements that are binding on
4 all state disqualified persons or fiduciaries of the foundation.

5 (b) The policy shall contain a statement that a violation of
6 the policy constitutes a breach of fiduciary duty to the state
7 private foundation and may subject a person to legal or equitable
8 relief, including, but not limited to, an order for restitution of
9 benefits, disgorgement of profits, damages to the organization
10 arising from diverted income, removal from office of the state
11 disqualified person and any individual who materially supported the
12 transaction, and fines as provided in this act.

13 (c) A state private foundation shall annually submit a copy of
14 its conflict of interest policy for state disqualified persons to
15 the attorney general with its annual report. The state private
16 foundation shall certify that each state disqualified person of the
17 foundation, including, but not limited to, each member of any
18 executive, management, audit, or grant committee, has received a
19 copy of the policy and has provided the foundation written
20 acknowledgement of the provisions of the policy.

21 (d) In addition to subdivision (c), each state private
22 foundation in existence on the effective date of this act shall
23 within 90 days after the effective date of this act submit a copy
24 of its conflict of interest policy to the attorney general, signed
25 by each state disqualified person in the manner described in
26 subdivision (c).

27 (5) Each state private foundation and each state disqualified

1 person of the foundation are jointly responsible for providing to
2 the attorney general an annual report for each state disqualified
3 person. Each state disqualified person and an officer on behalf of
4 the foundation shall sign the report under penalty of perjury. The
5 report shall recite all of the following:

6 (a) That the state private foundation has not and will not
7 indemnify any state disqualified person for expenses related to
8 complying with or violating this section.

9 (b) That each state disqualified person is protected under the
10 provisions of section 37.

11 (c) A statement that any fiduciary may commence an action to
12 compel the foundation's or a state disqualified person's compliance
13 with this section.

14 (d) A statement that any fiduciary is jointly and severally
15 liable to the foundation for any relief if that person does any of
16 the following:

17 (i) Authorizes or votes to permit a transaction in violation of
18 this section, including a violation of the conflict of interest
19 policy.

20 (ii) If the person is related to a state disqualified person,
21 receives any benefit from the foundation.

22 (e) A statement that a fiduciary or state disqualified person
23 may petition a probate court of this state for a declaratory ruling
24 regarding the legality of a particular proposed transaction. A
25 fiduciary or state disqualified person must serve a petition
26 described in this subdivision on the attorney general at least 21
27 days before any hearing on the petition. However, the court for

1 good cause shown may permit service by hand delivery at least 7
2 days before the hearing.

3 (f) A statement that the fiduciary or state disqualified
4 person was not involved in, and that no fiduciary is aware of, any
5 transaction during the reporting period that violated this section,
6 or a statement that describes in detail each transaction in
7 violation of this section.

8 Sec. 31. (1) A fiduciary of a state private foundation shall
9 exercise due diligence and actively participate in performing all
10 activities and functions assigned to that fiduciary under state or
11 federal law or by the state private foundation.

12 (2) A fiduciary shall be obedient to the charitable purpose or
13 purposes of the state private foundation and the restrictions and
14 conditions intended by donors and be familiar with and obey
15 applicable state and federal laws.

16 Sec. 32. (1) The attorney general may inspect and copy any of
17 the books and records of a state private foundation during normal
18 business hours and at any other reasonable time and may investigate
19 the operations, transactions, and activities of a state private
20 foundation.

21 (2) The attorney general may require an individual to appear
22 at a time and place specified by the attorney general to give
23 information under oath and to produce books and records in
24 possession of the person ordered to appear, including a custodian
25 of records of the state private foundation or another individual
26 with knowledge of the contents of any books and records requested
27 by the attorney general. An assistant attorney general or another

1 person designated by the attorney general may conduct the
2 examination and may administer the necessary oath or affirmation to
3 the witness.

4 (3) If the attorney general requires the attendance of a
5 person or the production of documents under subsection (2), the
6 attorney general shall issue an order that includes the time when
7 and the place where attendance or production is required and shall
8 serve the order on the individual, in the manner provided for
9 service of process in civil cases, at least 5 days before the date
10 fixed for attendance or production. The order has the same force
11 and effect as a subpoena.

12 (4) On application of the attorney general, any court having
13 jurisdiction over the individual or the state private foundation,
14 including the circuit and probate courts for the county of Ingham
15 and the circuit and probate courts for the counties where the state
16 private foundation's office or resident agent is located or the
17 person to whom the order is directed resides or is found, shall
18 enforce an order issued by the attorney general under subsection
19 (3) in the same manner as a subpoena and may issue an order
20 requiring the person to appear before the court, to produce
21 documentary evidence, or to give testimony concerning the matter in
22 question. Failure to obey the order of the court is punishable by
23 that court as contempt.

24 Sec. 33. (1) The attorney general or a fiduciary of a state
25 private foundation may commence an action against the state private
26 foundation to determine or to enforce compliance with any
27 restriction or condition on the use of a charitable gift intended

1 by a donor. If the court finds that the state private foundation
2 violated any restrictions or conditions intended by the donor, the
3 court shall issue an appropriate order that may include any of the
4 following:

5 (a) If the court finds that the state private foundation has
6 made 1 or more expenditures in violation of a restriction or
7 condition intended by a donor, ordering the state private
8 foundation to deposit an amount equivalent to the total amount of
9 distributions and related expenses attributable to the
10 nonconforming expenditure, with interest, in a segregated account
11 with the court or with a financial institution approved by and
12 subject to the jurisdiction of the court. Any money deposited in
13 the segregated account shall be held exclusively for charitable
14 distributions and distributed pursuant to court order in a manner
15 consistent with the donor's intended restrictions and conditions.

16 (b) If the court finds an unreasonable retention or amassing
17 of assets by the state private foundation, ordering the state
18 private foundation to deposit sufficient funds in a segregated
19 account with the court or with a financial institution approved by
20 and subject to the jurisdiction of the court to avoid unreasonable
21 retention or amassing. Any money deposited in the segregated
22 account shall be held exclusively for charitable distributions and
23 distributed pursuant to court order in a manner consistent with the
24 donor's intended restrictions and conditions.

25 (c) If the court finds a knowing or protracted failure to
26 honor restrictions or conditions, dissolution of the state private
27 foundation or other appropriate relief.

1 (d) Other appropriate additional or alternative relief,
2 including declaratory or injunctive or other equitable relief, to
3 ensure that the state private foundation and each fiduciary comply
4 with any restriction or condition intended by a donor or to prevent
5 future violations of this act.

6 (2) In addition to an action described in subsection (1), the
7 attorney general may commence any other appropriate action against
8 any of the following to ensure compliance with this act:

9 (a) A state private foundation.

10 (b) One or more of the fiduciaries of a state private
11 foundation.

12 (3) In an action described in subsection (2), the attorney
13 general may request appropriate declaratory, legal, or equitable
14 relief, including, but not limited to, any of the following:

15 (a) If a prohibited transaction is alleged, a request for full
16 restitution, including interest, profits, lost income or
17 appreciation, and fair use of any property wrongly received.

18 (b) An award of exemplary damages for a knowing violation of
19 this act.

20 (c) A civil fine of \$10,000.00, or 50% of the value of the
21 benefit received, whichever is greater, for a fraudulent or
22 malicious violation.

23 (4) The attorney general may commence an action described in
24 this section in either a probate or circuit court of this state,
25 which shall have concurrent jurisdiction over state private
26 foundations and the fiduciaries of state private foundations who
27 are subject to this act.

1 (5) A state private foundation or a fiduciary of the
2 foundation may commence an appropriate action in a probate court of
3 this state in the name of the state private foundation against the
4 state private foundation or 1 or more fiduciaries to ensure
5 compliance with this act's requirements.

6 (6) In an action described in this section, venue is proper in
7 any of the following counties:

8 (a) In any action commenced by the attorney general, in Ingham
9 county.

10 (b) In an action commenced by the attorney general or by a
11 state private foundation or a fiduciary of the state private
12 foundation against the state private foundation or 1 or more
13 fiduciaries, in the county where any defendant resides; where the
14 state private foundation maintains its primary place of business;
15 or, if no defendant resides in this state, in Ingham county.

16 (7) If the attorney general prevails in whole or in part in an
17 action described in this section, the attorney general is entitled
18 to recover reasonable costs and expenses associated with the
19 enforcement of this act and any other statutes governing charitable
20 organizations under which the attorney general has enforcement or
21 administrative authority. As used in this subsection and subsection
22 (8), "reasonable costs and expenses" includes actual expenses and
23 the reasonable value of administrative, auditor, accountant,
24 attorney, and other expert services, whether performed by employees
25 or independent contractors of the attorney general.

26 (8) A settlement agreement in an action described in this
27 section to which the attorney general and a state private

1 foundation are parties may contain any provisions, including the
2 payment of the attorney general's reasonable costs and expenses,
3 that are negotiated in good faith and are just and reasonable under
4 the circumstances. A provision of a settlement agreement requiring
5 confidential treatment of any or all terms of the agreement is
6 presumed to be unreasonable, and the state private foundation has
7 the burden of establishing by clear and convincing evidence that
8 the information for which confidential treatment is sought should
9 be treated as confidential under this section or any other
10 applicable law or court rule. The court shall approve a settlement
11 agreement described in this subsection if it appears to have been
12 reached in good faith and its effects are just and reasonable under
13 all of the relevant facts and circumstances.

14 (9) The attorney general is a necessary and indispensable
15 party to any action arising in whole or in part under this act,
16 including, but not limited to, an action to enforce, determine,
17 release, or modify a restriction or condition on the use of a
18 charitable gift intended by a donor. A court shall not issue an
19 order granting relief under this act unless the attorney general
20 has appeared as a party to the action or has waived his or her
21 right to participate in the action in writing, and the attorney
22 general has received notice and copies of all documents filed with
23 the court at least 21 days before any hearing. If the attorney
24 general appears in an action arising under this act, the court
25 shall adjourn any hearing in that action for at least 21 days if
26 the attorney general requests an adjournment to review the
27 proceedings and documents filed with the court. The court shall

1 liberally grant reasonable additional requests for adjournment by
2 the attorney general if requested to review the matter before the
3 court.

4 (10) Any order issued without full compliance with this
5 section may be set aside at the request of the attorney general.

6 (11) The attorney general may require transfer of any action
7 arising in whole or in part under this act to any court in which
8 jurisdiction and venue for an action initiated by the attorney
9 general under this act is proper.

10 (12) An action commenced under this section may be tried with
11 or without a jury.

12 (13) The attorney general's remedies under this act are
13 cumulative and do not affect any other cause of action or remedy
14 provided by law or equity.

15 Sec. 37. (1) A state private foundation or an officer,
16 employee, contractor, subcontractor, or agent of a state private
17 foundation shall not discharge, demote, suspend, threaten, harass,
18 or in any other manner discriminate against an employee of a state
19 private foundation in the terms and conditions of that employee's
20 employment because the employee lawfully does any of the following:

21 (a) Provides information, causes information to be provided,
22 or otherwise assists in an investigation regarding any conduct that
23 the employee reasonably believes constitutes a violation of this
24 act or other state law concerning charitable trusts, when the
25 information or assistance is provided to or the investigation is
26 conducted by any of the following:

27 (i) The attorney general or another state regulatory or law

1 enforcement agency.

2 (ii) An individual with supervisory authority over the employee
3 or any other individual working for the foundation who has the
4 authority to investigate, discover, or terminate an employee for
5 misconduct.

6 (b) Files, causes to be filed, testifies, participates in, or
7 otherwise assists in a proceeding filed or about to be filed
8 relating to an alleged violation of this act or other state law
9 concerning charitable trusts, if the foundation has any knowledge
10 of that proceeding.

11 (2) The employee or the attorney general may bring an action
12 in a probate or circuit court to obtain appropriate relief to
13 completely compensate an employee of a state private foundation who
14 has suffered a violation of this section, including, but not
15 limited to, any of the following:

16 (a) Reinstatement of the employee with the same seniority
17 status that the employee would have had if the violation had not
18 occurred.

19 (b) Back pay for the employee and interest as determined by
20 the court.

21 (c) Compensation for any special damages sustained as a result
22 of the violation, including, but not limited to, litigation costs,
23 expert witness fees, and reasonable attorney fees.

24 (3) If the attorney general brings an action described in
25 subsection (2) against a state private foundation, the attorney
26 general may request a civil fine of not more than \$100,000.00 for
27 each violation of this section, in addition to the relief described

1 in subsection (2).

2 (4) If an employee brings an action described in subsection
3 (2) against a state private foundation, the employee may request a
4 civil fine of not more than \$10,000.00 for each violation of this
5 section, in addition to the relief described in subsection (2).

6 (5) An action described in subsection (2) shall be commenced
7 within 180 days after the date on which the violation occurs.

8 (6) This section shall not be considered to diminish any
9 rights, privileges, or remedies of any employee under any federal
10 or state law or under any collective bargaining agreement.

11 Sec. 39. The attorney general may promulgate rules under the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328, as necessary to implement and administer this act and may
14 create and disseminate standard forms for use in reporting
15 information required by this act.