

HOUSE BILL No. 6290

September 17, 2002, Introduced by Rep. DeWeese and referred to the Committee on House Oversight and 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.

7 (b) "Candidate" means that term as defined in section 3 of
8 the Michigan campaign finance act, 1976 PA 388, MCL 169.203.

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

3 (i) The office of governor.

4 (ii) The office of lieutenant governor.

5 (iii) The office of attorney general.

6 (iv) The office of secretary of state.

7 (v) The office of state senator.

8 (vi) The office of state representative.

9 (vii) The office of supreme court justice.

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

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

15 (ii) Is a dependent of the reporting individual within the
16 meaning of section 152 of the internal revenue code, 26
17 U.S.C. 152.

18 (e) "Honorarium" means that term as defined in section 7 of
19 the Michigan campaign finance act, 1976 PA 388, MCL 169.207.

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

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

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

- 1 (iii) Gains derived from dealings in property.
- 2 (iv) Interest.
- 3 (v) Rents.
- 4 (vi) Royalties.
- 5 (vii) Dividends.
- 6 (viii) Annuities.
- 7 (ix) Income from life insurance and endowment contracts.
- 8 (x) Pensions and other retirement benefit payments.
- 9 (xi) Income from discharge of indebtedness.
- 10 (xii) Distributive share of partnership income.
- 11 (xiii) Income from an interest in an estate or trust.
- 12 (xiv) Honoraria received by the reporting individual.
- 13 (g) "Interested party" means a reporting individual, spouse,
- 14 minor child, or dependent child.
- 15 (h) "Internal revenue code" means the United States internal
- 16 revenue code of 1986.
- 17 (i) "Investment adviser" includes any investment adviser who
- 18 is generally involved in the role of an adviser in the management
- 19 or control of trusts.
- 20 (j) "Minor child" means a son or daughter of the reporting
- 21 individual who is under the age of 18.
- 22 (k) "Personal savings account" means a certificate of
- 23 deposit or any other form of deposit in a bank, savings and loan
- 24 association, credit union, or similar financial institution.
- 25 (l) "Qualified blind trust" means a trust in which a report-
- 26 ing individual, spouse, minor child, or dependent child has a

1 beneficial interest in the principal or income and which trust
2 meets the following requirements:

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

7 (A) Is independent of and not associated with an interested
8 party so that the trustee or other designated fiduciary cannot be
9 controlled or influenced in the administration of the trust by an
10 interested party.

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

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

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

18 (A) Is independent of and not associated with an interested
19 party so that the officer or employee cannot be controlled or
20 influenced in the administration of the trust by an interested
21 party.

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

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

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

1 (iv) The instrument that establishes the trust provides for
2 all of the following:

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

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

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

12 (D) The trustee or a designee of the trustee shall prepare
13 the trust tax return and the return and any information relating
14 to the return shall not be disclosed to an interested party.
15 This sub-subparagraph does not apply to trust income summarized
16 in appropriate categories necessary to complete an interested
17 party's tax returns.

18 (E) An interested party shall not receive a report on the
19 holdings and sources of income of the trust. This
20 sub-subparagraph does not apply to a report at the end of each
21 calendar quarter with respect to the total cash value of the
22 interest of the interested party in the trust, the net income or
23 loss of the trust, any reports necessary to enable an interested
24 party to complete an individual tax return required by law, or
25 any information required to be reported by a reporting individual
26 under section 4 or 5. A report allowed under this

1 sub-subparagraph shall not identify an asset or holding of the
2 trust.

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

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

12 (II) To the notification of the trustee of a law or regula-
13 tion that is subsequently applicable to an interested party that
14 prohibits the interested party from holding an asset, which noti-
15 fication directs that the asset not be held by the trust.

16 (III) To directions to the trustee to sell all of an asset
17 initially placed in the trust by an interested party that in the
18 determination of the reporting individual creates a conflict of
19 interest or the appearance of a conflict of interest due to the
20 subsequent assumption of duties by the reporting individual.

21 (G) The interested parties shall not attempt to obtain
22 information with respect to the holdings of the trust, including
23 an attempt to obtain a copy of any trust tax return filed or any
24 information relating to the trust tax return, except as otherwise
25 provided in this subdivision.

26 (m) "Relative" means an individual who is related to the
27 reporting individual within the fourth degree of consanguinity or

1 affinity. Relative includes the spouse or fiance or fiancée of
2 the reporting individual.

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

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

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

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

9 (i) The governor.

10 (ii) The lieutenant governor.

11 (iii) The attorney general.

12 (iv) The secretary of state.

13 (v) A state senator.

14 (vi) A state representative.

15 (vii) A justice of the supreme court.

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

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

23 Sec. 3. (1) Except as otherwise provided in this section,
24 before the expiration of 30 days after an individual becomes a
25 state official, that individual shall file with the secretary of
26 state a report that meets the requirements of this act. An
27 individual who becomes a state official and who in good faith

1 expects to perform the duties of that position or office for 60
2 days or less is not required to file a report under this
3 subsection. An individual who is exempt from filing a report
4 under this subsection shall file a sworn statement indicating his
5 or her reasons for not filing a report. The sworn statement is
6 required to be filed at the same time and in the same manner as a
7 report is required to be filed under this act.

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

14 (3) If an individual is a candidate for state office, that
15 individual shall file with the secretary of state before the
16 expiration of 30 days after the filing deadline for candidacy
17 established in the Michigan election law, 1954 PA 116, MCL 168.1
18 to 168.992, a report that meets the requirements of this act.

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

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

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

4 (a) The source, type, and amount or value of income other
5 than income reported under subdivision (b) or (c) received during
6 the preceding calendar year by the reporting individual if the
7 total income from that source equals \$200.00 or more during that
8 calendar year. A reporting individual is not required to report
9 under this subdivision the source, type, and amount or value of
10 income received as compensation from this state for his or her
11 employment as a state official.

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

16 (c) The source, type, and amount or value of income that
17 consists of dividends, rents, interest, and capital gains
18 received during the preceding calendar year by the reporting
19 individual if the total income from that source equals \$200.00 or
20 more during that calendar year.

21 (d) The identity and value of any interest in property held
22 during the preceding calendar year by the reporting individual in
23 a trade or business, for investment, or for the production of
24 income if the property had a fair market value of \$1,000.00 or
25 more at the close of the preceding calendar year. A reporting
26 individual is not required to report a personal liability owed to
27 the reporting individual by a spouse or by a parent, child, or

1 sibling of the reporting individual or spouse. A reporting
2 individual is not required to report deposits aggregating
3 \$5,000.00 or less in a personal savings account.

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

9 (i) A liability owed by the reporting individual to a spouse
10 or to a parent, child, or sibling of the reporting individual or
11 spouse.

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

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

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

20 (f) A brief description, the date, and value of a purchase,
21 sale, or exchange of real property or of stocks, bonds, commodi-
22 ties, futures, or other forms of securities during the preceding
23 calendar year by the reporting individual that is equal to an
24 amount of \$1,000.00 or more. A reporting individual is not
25 required to report any of the following under this subdivision:

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

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

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

16 (h) A description, including the dates, parties, and terms,
17 of an agreement or arrangement by or with the reporting individ-
18 ual with respect to future employment, a leave of absence during
19 that individual's term of office, continuation of payments by a
20 former employer other than this state, or continuation of partic-
21 ipation in an employee welfare or benefit plan maintained by a
22 former employer.

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

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

5 (a) For real estate or a real estate partnership, the
6 reporting individual may list the date of purchase and the pur-
7 chase price.

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

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

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

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

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

17 (c) For interests in any property, the assessed value of the
18 item for tax purposes, adjusted to reflect the market value of
19 the item used for the assessment if the assessed value is com-
20 puted at less than 100% of the market value. Along with the use
21 of a valuation method under this subdivision, the reporting indi-
22 vidual shall attach a complete description of the method used in
23 determining the assessed value of the item.

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

1 (a) For a spouse, the source of income described in section
2 4(1)(a) and received during the preceding calendar year if the
3 total income from that source equals \$1,000.00 or more during
4 that calendar year. If the spouse is self-employed in business
5 or a profession, only the nature of the business or profession is
6 required to be reported under this subdivision.

7 (b) For a spouse, the source, date, and amount of honoraria
8 received from any source if the total honoraria received from
9 that source equals \$200.00 or more during the preceding calendar
10 year.

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

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

15 Sec. 6. (1) A reporting individual shall include in a
16 report the information required to be filed under section 4 with
17 respect to the holdings of and the income from a trust or other
18 financial arrangement from which income is received by or with
19 respect to which a beneficial interest in principal or income is
20 held by the reporting individual, spouse, or dependent child.
21 The information required to be reported under this section is
22 subject to sections 4, 7, and 8. A reporting individual is not
23 required to report the information required in this subsection
24 for any of the following:

25 (a) A qualified blind trust.

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

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

3 (ii) The reporting individual, spouse, and all dependent
4 children have no knowledge of the holdings or sources of income
5 of the trust.

6 (c) A widely held investment fund, if the reporting individ-
7 ual does not exercise control over and does not have the ability
8 to exercise control over the financial interests held by the
9 fund.

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

18 (3) If a reporting individual has a beneficial interest in a
19 trust exempt from the reporting requirements under subsection (1)
20 or from meeting the requirements of subsection (2), the reporting
21 individual shall attach to a report filed under this act all of
22 the following information:

23 (a) The executed trust instrument, excluding the provisions
24 of the trust that relate to the testamentary disposition of the
25 trust assets.

26 (b) The identity and value of trust assets that were
27 transferred to the trust by the reporting individual, spouse,

1 minor child, or dependent child. The value reported under this
2 subdivision may be by category as provided in section 7(2).

3 (c) The signed written agreement described in subsection
4 (2), if any.

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

7 (a) Disclose any information to an interested party with
8 respect to the trust that is prohibited from disclosure under
9 this section.

10 (b) Acquire any holding the ownership of which is prohibited
11 by the trust instrument.

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

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

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

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

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

22 (6) A person who knowingly violates subsection (4) or (5) is
23 subject to a civil fine of \$10,000.00 or less. A person who neg-
24 ligently violates subsection (4) or (5) is subject to a civil
25 fine of \$5,000.00 or less.

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

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

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

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

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

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

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

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

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

12 (2) Except as otherwise provided for in this section, an
13 amount or value reported under section 4(1)(d), (e), or (f) or
14 5(d) shall be reported by category as follows:

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

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

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

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

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

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

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

22 (3) Instead of indicating the category of amount or value of
23 any item contained in a report, a reporting individual may indi-
24 cate the exact dollar amount or value of the item.

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

1 (a) Information that is reported by the reporting individual
2 under the Michigan campaign finance act, 1976 PA 388, MCL 169.201
3 to 169.282.

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

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

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

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

15 (c) An item otherwise required to be reported under section
16 5 that concerns a spouse who is living separate and apart from
17 the reporting individual with the intention of terminating the
18 marriage or maintaining a legal separation.

19 (d) An item that concerns income or obligations of the
20 reporting individual arising from the termination of his or her
21 marriage or a permanent legal separation from a spouse.

22 Sec. 9. (1) A reporting individual who files a report more
23 than 30 days after the date the report is required to be filed
24 under section 3 or more than 30 days after the date of an exten-
25 sion given under section 3, if any, shall pay a filing fee of
26 \$200.00 to the secretary of state. The secretary of state shall

1 credit all fees collected under this section into the general
2 fund of this state.

3 (2) The secretary of state may waive the filing fee under
4 this section for good cause as prescribed in rules promulgated
5 under section 10.

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

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

10 (b) Receive reports required by this act.

11 (c) Make available for public use a report filed under this
12 act within 30 days after the report is filed as provided in the
13 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

14 (d) Promulgate rules and issue declaratory rulings to imple-
15 ment this act under the administrative procedures act of 1969,
16 1969 PA 306, MCL 24.201 to 24.328.

17 (e) Receive complaints and conduct investigations as may be
18 necessary to determine if there is reason to believe a violation
19 of this act occurred. Investigations shall be in accordance with
20 the procedures set forth in the administrative procedures act of
21 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

26 (2) If the secretary of state, upon investigation,
27 determines that there is reason to believe a violation of this

1 act occurred, the secretary of state shall forward the results of
2 that investigation to the attorney general for enforcement of
3 this act.

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

6 (2) A default in the payment of a fee or a civil fine
7 ordered under this act or an installment of a fine may be reme-
8 died by any means authorized under the revised judicature act of
9 1961, 1961 PA 236, MCL 600.101 to 600.9948.

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