STANDARDS OF CONDUCT FOR PUBLIC OFFICERS AND EMPLOYEES
Act 196 of 1973

AN ACT to prescribe standards of conduct for public officers and employees; to create a state board of ethics and prescribe its powers and duties; and to prescribe remedies and penalties.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974;—Am. 1980, Act 481, Eff. Mar. 31, 1981.

The People of the State of Michigan enact:

15.341 Definitions.

Sec. 1. As used in this act:

(a) "Board" means the board of ethics.

(b) "Employee" means an employee, classified or unclassified, of the executive branch of this state. For the purpose of section 2b, employee shall include an employee of this state or a political subdivision of this state.

(c) "Public officer" means a person appointed by the governor or another executive department official. For the purpose of section 2b, public officer shall include an elected or appointed official of this state or a political subdivision of this state.

(d) "Unethical conduct" means a violation of the standards in section 2.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974;—Am. 1980, Act 481, Eff. Mar. 31, 1981.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

15.342 Public officer or employee; prohibited conduct.

Sec. 2. (1) A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.

(2) A public officer or employee shall not represent his or her personal opinion as that of an agency.

(3) A public officer or employee shall use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

(4) A public officer or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.

(5) A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with this state.

(6) Except as provided in section 2a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

(7) Except as provided in section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974;—Am. 1978, Act 352, Imd. Eff. July 12, 1978;—Am. 1984, Act 53, Imd. Eff. Apr. 12, 1984.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

15.342a MCL 15.301 to 15.310 and MCL 15.321 to 15.330 not amended or modified; purpose

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of act; validity of contract in violation of act; voting on, making, or participating in governmental decisions; "governmental decision" defined.

Sec. 2a. (1) This act shall not in any manner amend or modify the terms of Act No. 317 of the Public Acts of 1968, being sections 15.321 to 15.330 of the Michigan Compiled Laws and Act No. 318 of the Public Acts of 1968, being sections 15.301 to 15.310 of the Michigan Compiled Laws.

(2) This act is intended as a code of ethics for public officers and employees and not as a rule of law for public contracts. A contract in respect to which a public officer or employee acts in violation of this act, shall not be considered to be void or voidable unless the contract is a violation of another statute which specifically provides for the remedy.

(3) Subject to subsection (4), section 2(6) and (7) shall not apply and a public officer shall be permitted to vote on, make, or participate in making a governmental decision if all of the following occur:

(a) The requisite quorum necessary for official action on the governmental decision by the public entity to which the public officer has been elected or appointed is not available because the participation of the public officer in the official action would otherwise violate section 2(6) or (7).

(b) The public officer is not paid for working more than 25 hours per week for this state or a political subdivision of this state.

(c) The public officer promptly discloses any personal, contractual, financial, business, or employment interest he or she may have in the governmental decision and the disclosure is made part of the public record of the official action on the governmental decision.

(4) If a governmental decision involves the awarding of a contract, section 2(6) and (7) shall not apply and a public officer shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(a) All of the conditions of subsection (3) are fulfilled.

(b) The public officer will directly benefit from the contract in an amount less than $250.00 or less than 5% of the public cost of the contract, whichever is less.

(c) The public officer files a sworn affidavit containing the information described in subdivision (b) with the legislative or governing body making the governmental decision.

(d) The affidavit required by subdivision (c) is made a part of the public record of the official action on the governmental decision.

(5) As used in this section, "governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, or measure on which a vote by the members of a legislative or governing body of a public entity is required and by which a public entity formulates or effectuates public policy.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974;—Am. 1984, Act 53, Imd. Eff. Apr. 12, 1984.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed §§4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

15.342b Report of violation; applicability of sanctions; civil fine.

Sec. 2b. (1) A public officer or employee who has knowledge that another public officer or employee has violated section 2 may report the existence of the violation to a supervisor, person, agency, or organization. A public officer or employee who reports or is about to report a violation of section 2 shall not be subject to any of the following sanctions because they reported or were about to report a violation of section 2.

(a) Dismissal from employment or office.

(b) Withholding of salary increases that are ordinarily forthcoming to the employee.

(c) Withholding of promotions that are ordinarily forthcoming to the employee.

(d) Demotion in employment status.

(e) Transfer of employment location.

(2) Whenever a public officer or employee who has reported or who intends to report a violation of section 2 may be subject to any of the sanctions under this section for reasons other than the public officer's or employee's actions in reporting or intending to report a violation of section 2, the appointing or supervisory authority before the imposition of a sanction shall establish by a preponderance of evidence that the sanction to be imposed is not imposed because the public officer or employee reported or intended to report a violation of section 2.

(3) A person who violates this section is liable for a civil fine of not more than $500.00.

(4) A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

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History: Add. 1978, Act 352, Imd. Eff. July 12, 1978;—Am. 1980, Act 481, Eff. Mar. 31, 1981.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

15.342c Civil action; commencement of action; “damages” defined.

Sec. 2c. (1) A person who alleges a violation of section 2b may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of section 2b, including reasonable attorney fees.

History: Add. 1980, Act 481, Eff. Mar. 31, 1981.

15.342d Court order; costs.

Sec. 2d. A court, in rendering a judgment in an action brought pursuant to section 2b, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

History: Add. 1980, Act 481, Eff. Mar. 31, 1981.

15.342e Posting notices of protections and obligations.

Sec. 2e. An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

History: Add. 1980, Act 481, Eff. Mar. 31, 1981.

15.343 Board of ethics; creation; function.

Sec. 3. (1) There is hereby created within the executive office of the governor a board of ethics.

(2) The function of the board shall be advisory and investigatory and the board is not empowered to take direct action against any person or agency.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

15.344 Board of ethics; appointment, qualifications, and terms of members; vacancies; ex officio members; quorum; action by board; compensation; executive secretary; clerical or administrative assistance.

Sec. 4. (1) The board of ethics shall consist of 7 members appointed by the governor, with the advice and consent of the senate, 1 of whom shall be designated as chairman and all of whom shall be residents of the state and not associated with public employment. Not more than 4 members of the board shall be members of the same political party. Initial appointments shall be made for terms commencing 30 days after the effective date of this act. Of those first appointed 2 shall serve for 1 year, 2 shall serve for 2 years, and 3 shall serve for 3 years. For the 1 year, 2 year and 3 year terms, at least 1 member for each such term shall be of the same political party. In the event of a vacancy, the governor shall fill the vacancy for the remainder of the term. Subsequent to the initial appointments, members shall be appointed for terms of 4 years.

(2) The attorney general and the state personnel director shall serve ex officio without the right to vote.

(3) Four members of the board shall constitute a quorum and the affirmative vote of 4 members shall be necessary for any action. Members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. With the consent of the civil service commission, the state personnel director shall designate an employee of the department of civil service, acceptable to the board, to act as executive secretary of the board and shall provide clerical or administrative assistance from the department of civil service as the board may, from time to time, request.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

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15.345 Board of ethics; powers and duties.

Sec. 5. (1) The board shall:

(a) Receive complaints concerning alleged unethical conduct by a public officer or employee from any person or entity, inquire into the circumstances surrounding the alleged unethical conduct, and make recommendations concerning individual cases to the appointing authority with supervisory responsibility for the person whose activities have been investigated. All departments of state government shall cooperate with the board of ethics in the conduct of its investigations.

(b) Initiate investigations of practices that could affect ethical conduct of a public officer or employee.

(c) Hold public hearings.

(d) Administer oaths and receive sworn testimony.

(e) Issue and publish advisory opinions upon request from a public officer or employee or their appointing or supervisory authority relating to matters affecting ethical conduct of a public officer or employee.

(2) In the issuance of investigative reports and recommendations and advisory opinions, the board shall be advised as to legal matters by the attorney general.

(3) When a recommendation to an appointing authority is made by the board which affects a classified employee, the appointing authority shall initiate appropriate proceedings in accordance with such recommendation and pursuant to the rules of the civil service commission.

(4) When a recommendation to an appointing authority is made by the board concerning an unclassified employee or appointee, the appointing authority shall take appropriate disciplinary action which may include dismissal.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

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15.346 Rules.

Sec. 6. The board may promulgate rules governing its own procedures pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. For a period of 1 year following the effective date of this act the board shall have full authority to exercise all of its functions in accordance with temporary rules of procedure promulgated by the board. Both the temporary and permanent rules of the board shall provide that:

(a) The board may request the attendance of any witness whose testimony, in the judgment of the board, will aid in the conduct of its investigations.

(b) A person appearing before the board shall submit either sworn or unsworn testimony as the board may decide and may at all times be represented and accompanied by counsel.

(c) A record of testimony taken before the board or a hearing officer designated by it shall be made in the manner prescribed by the board.

(d) The board may, when it appears necessary for the protection of individual rights, hold its meetings and hearings in private. All other meetings and hearings shall be open to the public.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

Administrative rules: R 15.1 et seq. of the Michigan Administrative Code.

15.347 Appropriation.

Sec. 7. There is appropriated from the general fund of the state an amount necessary to implement this act but not to exceed $10,000.00 for the fiscal year ending June 30, 1974.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

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15.348 Other acts not superseded; interpretation and administration of act.

Sec. 8. The provisions of this act shall not supersede the provisions of any other acts heretofore or hereinafter enacted and shall be interpreted and administered to the extent not inconsistent with other acts.

History: 1973, Act 196, Imd. Eff. Jan. 8, 1974.

Compiler's note: Section 191 of Act 227 of the Public Acts of 1975 repealed MCL 4.401 to 4.410, 168.901 to 168.929, 15.321 to 15.330, 15.301 to 15.310, and 15.341 to 15.348. The Michigan Supreme Court, however, in Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich. 123, 240 N.W.2d 193 (1976), held Act 227 of the Public Acts of 1975 unconstitutional for being in violation of Mich. Const., Art. 4, § 24.

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