

(9) The department, the department of community health, and the office of financial and insurance services shall post, on their respective websites, information on how to access the national clearinghouse established under the federal deficit reduction act of 2005, Public Law 109-171, when the national clearinghouse becomes available to consumers.

#### **400.112e Rules.**

Sec. 112e. The department of community health, in consultation with the department of human services and the office of financial services, may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement the partnership program in accordance with the requirements of section 1917(b) of the social security act, 42 USC 1396p, section 6021 of the federal deficit reduction act of 2005, Public Law 109-171, and applicable federal regulations or guidelines.

#### **Repeal of MCL 400.112d.**

Enacting section 1. Section 112d of the social welfare act, 1939 PA 280, MCL 400.112d, is repealed.

This act is ordered to take immediate effect.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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### **[No. 675]**

#### **(HB 6599)**

AN ACT to amend 1917 PA 350, entitled “An act to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act,” by amending sections 1, 2, 3, 4, 5, and 8 (MCL 445.401, 445.402, 445.403, 445.404, 445.405, and 445.408), sections 1 and 3 as amended by 2006 PA 294; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

#### **445.401 Second hand or junk dealer; license required; internet drop-off store exempt from licensure.**

Sec. 1. (1) A person, corporation, copartnership, or firm shall not carry on the business of dealer in second hand goods or junk dealer in any of the counties, cities, or villages of this state without having first obtained, from the mayor of the city or the chief executive officer of the county or village where the business is to be carried on, a license under this act authorizing that person, corporation, copartnership, or firm to carry on that business.

(2) This subsection does not require an internet drop-off store complying with subsection (3), or a person engaged in the sale, purchase, consignment, or trade of personal property or other valuable thing for himself or herself, to obtain a license under this act.

(3) An internet drop-off store in compliance with the following conditions is exempt from licensure as a second hand dealer or junk dealer under this act:

(a) Has a fixed place of business within this state except that he or she exclusively transacts all purchases or sales by means of the internet and the purchases and sales are not physically transacted on the premises of that fixed place of business.

(b) Has the personal property or other valuable thing available on a website for viewing by photograph, if available, by the general public at no charge, which website shall be searchable by zip code or state, or both. The website viewing shall include, as applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(c) Maintains records of the sale, purchase, consignment, or trade of the personal property or other valuable thing for at least 2 years, which records shall contain a description, including a photograph, if available, and, if applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(d) Provide the local law enforcement agency with any name under which it conducts business on the website and access to the business premises at any time during normal business hours for purposes of inspection.

(e) Within 24 hours after a request from a local law enforcement agency, provide an electronic copy of the seller's or signor's name, address, telephone number, driver license number and issuing state, the buyer's name and address if applicable, and a description of the personal property or other valuable thing as described in subdivision (c). The provision of information shall be in a format acceptable to the local law enforcement agency but shall at least be in a legible format and in the English language.

(f) Provide that payment for the personal property or other valuable thing is executed by means of check or other electronic payment system, so long as the payment is not made in cash. No payment shall be provided to the seller until the item is sold.

(g) Immediately remove the personal property or other valuable thing from the website if the local law enforcement agency determines that the personal property or other valuable thing is stolen.

#### **445.402 Second hand or junk dealer; license, issuance; petition by surrounding property owners; terms; transferability; fee; inspection.**

Sec. 2. (1) The mayor of a city or chief executive officer of a county or village may grant to any person, corporation, copartnership, or firm, a license authorizing that person, corporation, copartnership, or firm to carry on the business of a second hand dealer or junk dealer subject to the provisions of this act.

(2) The license shall designate the particular place where that person, corporation, copartnership, or firm shall carry on that business. The business shall be conducted only in the place designated in the license.

(3) A license shall not be issued to any person, firm, or corporation desiring to conduct a junk business in any residential community where 65% or more of the property owners within a radius of 1 city block of the contemplated junk business petition the issuing officer not to do so.

(4) The license shall be for the period of 1 year from date of issuance unless sooner revoked for cause and is not transferable. The legislative body of any city, or the trustees and chief executive officer of any county or village, shall establish the fee for the processing and issuance of the license in accordance with its charter or local ordinance, based upon the cost of issuance and administration of that license.

(5) The city, village, or county may inspect the premises of a licensed second hand or junk dealer during normal business hours.

**445.403 Definitions.**

Sec. 3. As used in this act:

(a) “Automotive recycler” means a person who engages in business primarily for the purpose of selling retail salvage vehicle parts and secondarily for the purpose of selling retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal or a person employed as a salvage vehicle agent as that term is defined in section 56c of the Michigan vehicle code, 1949 PA 300, MCL 257.56c.

(b) “Industrial scrap” means materials that are a direct product or by-product of any form of manufacturing, shaping, or cutting process from a person, company, corporation, copartnership, or firm whose principal business is the manufacturing, shaping, or cutting of materials at a fixed place of business.

(c) “Internet drop-off store” means a person, corporation, or firm that contracts with other persons, corporations, or firms to offer its personal property or other valuable thing for sale, purchase, consignment, or trade through means of an internet website and meets the conditions described in section 1(3).

(d) “Local law enforcement agency” means the police agency of the city, village, or township, or if none, the county sheriff of the county in which the internet drop-off store conducts business.

(e) “Scrap processor” means a person, utilizing machinery and equipment and operating from a fixed location, whose principal business is the processing and manufacturing of iron, steel, nonferrous metals, paper, plastic, or glass, into prepared grades of products suitable for consumption by recycling mills, foundries, and other scrap processors.

(f) “Second hand dealer” or “junk dealer” means any person, corporation, or member or members of a copartnership or firm whose principal business is that of purchasing, selling, exchanging, storing, or receiving second hand articles of any kind, scrap metals, cast iron, old iron, old steel, tool steel, aluminum, copper, brass, lead pipe or tools, or lighting and plumbing fixtures. Second hand dealer or junk dealer does not include a scrap processor, an automotive recycler, or a junkyard that deals principally in industrial scrap and is licensed by a city, village, or county.

**445.404 Second hand or junk dealer; sign; display; transactions, record.**

Sec. 4. (1) A second hand dealer or junk dealer shall post in a conspicuous place in or upon its place of business a sign having its name and occupation.

(2) A second hand or junk dealer shall keep a separate book or other record open to inspection by a member of a local law enforcement agency, in which shall be written or entered in the English language at the time of the purchase or exchange of any article a description of the article, the name, description, fingerprint, operator’s or chauffeur’s license or state identification number, registration plate number, and address of the person from whom the article was purchased and received, and the day and hour when the purchase or exchange was made as well as the location from which the item was obtained, if applicable. Each entry shall be numbered consecutively.

**445.405 Second hand or junk dealer; articles purchased; retention; tagging; record; exceptions.**

Sec. 5. (1) The articles purchased or exchanged shall be retained by the purchaser for at least 15 days before disposing of them, in an accessible place in the building where the articles are purchased and received. A tag shall be attached to the articles in some visible and convenient place, with the number written thereupon, to correspond with the entry number in the book or other record.

(2) The purchaser shall prepare and deliver on Monday of each week to the chief of police or chief law enforcement officer of the local unit of government in which such business is carried on, before 12 o'clock noon, a legible and correct copy written in the English language from the book or other record, containing a description of each article purchased or received during the preceding week, the hour and day when the purchase was made, and the description of the person from whom it was purchased. The statement shall be verified by the person subscribing his or her name thereto.

(3) This section does not apply to old rags, waste paper, and household goods except radios, televisions, record players, and electrical appliances and does not require the purchaser to retain articles purchased from individuals, firms, or corporations having a fixed place of business after those articles shall have been reported.

#### **445.408 Violation of act; penalty; remedies.**

Sec. 8. (1) Except as otherwise provided for in this section, a person who violates this act is guilty of a misdemeanor and shall be imprisoned for not more than 6 months and shall be fined not less than \$500.00 or more than \$1,000.00.

(2) A second hand or junk dealer who buys or sells scrap metal, knowing that it is stolen, is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$2,000.00, or both.

(3) A second hand or junk dealer who buys or sells stolen scrap metal that he or she has reason to believe was unlawfully removed from a utility pole, telecommunication company property, government property, or utility property or jobsite is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(4) The license of a person, corporation, copartnership, or firm that is found guilty of violating any of the provisions of this act shall be considered to be revoked upon entry of a conviction and such person, corporation, copartnership, or firm shall not be permitted to carry on the business of being a second hand or junk dealer within this state for a period of 1 year after that conviction.

(5) The remedies under this act are independent and cumulative. The use of 1 remedy by a person does not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

#### **Repeal of MCL 445.471 to 445.476.**

Enacting section 1. 1945 PA 231, MCL 445.471 to 445.476, is repealed.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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**[No. 676]**

**(HB 6638)**

AN ACT to amend 1949 PA 208, entitled "An act to authorize cities, villages and townships of this state to designate neighborhood areas for the purpose of planning and carrying out local public improvements for the prevention of blight within such areas; to authorize assistance in carrying out plans for local improvements by the acquisition and disposal of real property in such areas; to provide for the combining of neighborhood improvements that benefit the entire neighborhood into 1 improvement project; to provide for the establishment of local assessment districts coterminous with the neighborhood boundaries; to prescribe

the methods of financing the exercise of these powers, and to declare the effect of this act,” by amending sections 2 and 4 (MCL 125.942 and 125.944).

*The People of the State of Michigan enact:*

### **125.942 Definitions.**

Sec. 2. As used in this act:

(a) “Neighborhood area” means a portion of a municipality that has been delimited as a neighborhood unit in a plan of neighborhoods adopted by the legislative body, which plan has the function of designating the service area of elementary schools, playgrounds, or other local improvements.

(b) “Real property” includes land, building improvements, land under water, waterfront property, and any and all easements, franchises, and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise, and right to that property, or appurtenant to that property, legal or equitable, including rights-of-way, terms for years, and liens, charges, or incumbrances by mortgage, judgment, or otherwise.

(c) “Municipality” means a city, village, or township.

(d) “Legislative body” means the city council, city commission, township board, or other legislative body of a city, village, or township.

(e) “Public use”, when used with reference to land reserved for that purpose, means and relates to uses for the general benefit of the public, such as schools, libraries, public institutions, administration buildings, parks, boulevards, playgrounds, streets, alleys, easements or sewers, public lighting, water, gas, or other similar utilities, or improvements.

(f) “Privately owned lands” means all land not held by the municipal body, county, state, or federal government for public purposes.

(g) “Owner” means any person or persons, natural or corporate, owning a legal or equitable title to the land.

(h) “Project” means all of the undertakings authorized in this act for the improvement of a neighborhood area.

(i) “Blighted property” means property that meets any of the following criteria:

(i) The property has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) The property is an attractive nuisance because of physical condition or use.

(iii) The property is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) The property has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(v) The property is tax reverted property owned by a municipality, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or this state shall not result in the loss to the property of eligibility for any project authorized for the improvement of a neighborhood area under this act, tax or special assessment authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vi) The property is owned or is under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss

to the property of the eligibility for any project authorized for the improvement of a neighborhood area under this act, tax or special assessment authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vii) The property is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(viii) The property has code violations posing a severe and immediate health or safety threat and has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

### **125.944 Acquisition of property; condemnation; proceedings under eminent domain.**

Sec. 4. (1) For the accomplishment of the purposes of this act, the municipality may acquire fee simple title in real property by purchase, gift, or exchange and may acquire under this act title to blighted property by condemnation. The municipality shall then apply that blighted property acquired by condemnation under this act and other real property acquired by other means to the expressed purposes of this act.

(2) By authority of this act for blighted property, or by authority of other state law authorizing the condemnation of property for other public uses, the local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the state constitution of 1963 and the laws of the state or provisions of any local charter relative to condemnation.

This act is ordered to take immediate effect.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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**[No. 677]**

**(HB 6639)**

AN ACT to amend 1945 PA 344, entitled “An act to authorize counties, cities, villages and townships of this state to adopt plans to prevent blight and to adopt plans for the rehabilitation of blighted areas; to authorize assistance in carrying out such plans by the acquisition of real property, the improvement of such real property and the disposal of real property in such areas; to prescribe the methods of financing the exercise of these powers; and to declare the effect of this act,” by amending sections 2, 3, and 5 (MCL 125.72, 125.73, and 125.75), sections 2 and 3 as amended by 1986 PA 320.

*The People of the State of Michigan enact:*

### **125.72 Definitions.**

Sec. 2. As used in this act:

(a) “Blighted area” means a portion of a municipality, developed or undeveloped, improved or unimproved, with business or residential uses, marked by a demonstrated pattern of deterioration in physical, economic, or social conditions, and characterized by such conditions as functional or economic obsolescence of buildings or the area as a whole, physical deterioration of structures, substandard building or facility conditions, improper or inefficient

division or arrangement of lots and ownerships and streets and other open spaces, inappropriate mixed character and uses of the structures, deterioration in the condition of public facilities or services, or any other similar characteristics which endanger the health, safety, morals, or general welfare of the municipality, and which may include any buildings or improvements not in themselves obsolescent, and any real property, residential or nonresidential, whether improved or unimproved, the acquisition of which is considered necessary for rehabilitation of the area. It is expressly recognized that blight is observable at different stages of severity, and that moderate blight unremedied creates a strong probability that severe blight will follow. Therefore, the conditions that constitute blight are to be broadly construed to permit a municipality to make an early identification of problems and to take early remedial action to correct a demonstrated pattern of deterioration and to prevent worsening of blight conditions.

(b) “Blighted property” means property that meets any of the following criteria:

(i) The property has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.

(ii) The property is an attractive nuisance because of physical condition or use.

(iii) The property is a fire hazard or is otherwise dangerous to the safety of persons or property.

(iv) The property has had the utilities, plumbing, heating, or sewerage disconnected, destroyed, removed, or rendered ineffective for a period of 1 year or more so that the property is unfit for its intended use.

(v) The property is tax reverted property owned by a municipality, by a county, or by this state. The sale, lease, or transfer of tax reverted property by a municipality, a county, or this state shall not result in the loss to the property of eligibility for any project authorized under this act for the rehabilitation of a blighted area, platting authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vi) The property is owned or is under the control of a land bank fast track authority under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The sale, lease, or transfer of the property by a land bank fast track authority shall not result in the loss to the property of eligibility for any project authorized under this act for the rehabilitation of a blighted area, platting authorized under this act, or tax relief or assistance, including financial assistance, authorized under this act or any other act.

(vii) The property is improved real property that has remained vacant for 5 consecutive years and that is not maintained in accordance with applicable local housing or property maintenance codes or ordinances.

(viii) The property has code violations posing a severe and immediate health or safety threat and has not been substantially rehabilitated within 1 year after the receipt of notice to rehabilitate from the appropriate code enforcement agency or final determination of any appeal, whichever is later.

(c) “Municipality” means a county, city, village, or township in the state.

(d) “Development plan” means a plan for the rehabilitation of all or any part of a blighted area.

(e) “Development area” means that portion of a blighted area to which a development plan is applicable.

(f) “Real property” means land, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal,

and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including rights of way, terms for years, and liens, charges, or incumbrances by mortgage, judgment, or otherwise.

(g) “Local taxes” means state, county, city, village, township and school taxes, any special district taxes, and any other tax on real property, but does not include special assessment for local benefit improvements.

(h) “Public use” when used with reference to land reserved for public use means only such uses as are for the general use and benefit of the public as a whole, such as schools, libraries, public institutions, administration buildings, parks, boulevards, playgrounds, streets, alleys, or easements for sewers, public lighting, water, gas, or other similar utilities.

(i) “Project” means all of the undertakings authorized in this act for the rehabilitation of a blighted area.

### **125.73 Powers of municipality.**

Sec. 3. A municipality may bring about the rehabilitation of blighted areas and the prevention, reduction, or elimination of blight, blighting factors, or causes of blight, and for that purpose may do any of the following:

(a) Acquire real property by purchase, gift, or exchange.

(b) Acquire under this act blighted property by condemnation.

(c) Lease, sell, renovate, improve, or exchange blighted property or other real property acquired by other means in accordance with the state constitution of 1963 and this act.

### **125.75 Rehabilitation of blighted areas; acquisition of property; proceedings under power of eminent domain; condemnation; dispossession.**

Sec. 5. (1) For the accomplishment of the purposes of this act, the municipality shall acquire fee simple title in real property by purchase, gift, or exchange, and may acquire under this act title to blighted property by condemnation. The municipality shall then apply that blighted property acquired by condemnation under this act and other real property acquired by other means to the expressed purposes of this act.

(2) By authority of this act for blighted property, or by authority of other state law authorizing the condemnation of property for other public uses, the local legislative body may institute and prosecute proceedings under the power of eminent domain in accordance with the state constitution of 1963 and the laws of the state or provisions of any local charter relative to condemnation. A resident owner in a development area may not be dispossessed after condemnation under the provisions of this act until other adequate housing accommodations are available, to the people displaced.

This act is ordered to take immediate effect.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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**[No. 678]**

**(HB 5603)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health;



to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” (MCL 333.1101 to 333.25211) by adding section 5141.

*The People of the State of Michigan enact:*

**333.5141 Reflex sympathetic dystrophy/complex regional pain syndrome (RSD/CRPS); work group; education program; materials and brochures; funds.**

Sec. 5141. (1) Upon appropriation of the necessary funding to support the work group and the education program, the department shall establish a reflex sympathetic dystrophy/complex regional pain syndrome (RSD/CRPS) work group that is composed of both public and private sector members. The RSD/CRPS work group, in consultation with health care providers and health-related organizations, shall develop and coordinate an RSD/CRPS education program to promote public awareness of the causes of RSD/CRPS and the value of early detection, diagnosis, and treatment of this disease. The RSD/CRPS program shall include a public education and outreach campaign utilizing written materials and brochures to promote awareness of RSD/CRPS among consumers, health care providers, teachers, and human services providers and to enable individuals to make informed decisions about their health. The written materials and brochures shall include, but are not limited to, information regarding each of the following:

- (a) Cause and nature of RSD/CRPS.
- (b) Risk factors that contribute to the manifestation of RSD/CRPS.
- (c) All available treatment options for RSD/CRPS including the risks and benefits of each of those options.
- (d) Environmental safety and injury prevention.
- (e) Rest and use of appropriate body mechanics.
- (f) Any other information that is relevant to RSD/CRPS.

(2) The educational materials and brochures developed under subsection (1) shall be made available to the public through the department’s website or health promotions clearing-house hotline and, if sufficient funding is available, the educational materials and brochures shall be distributed to local health departments, hospitals, and health care providers for distribution to the public. The RSD/CRPS work group shall also facilitate as a part of the RSD/CRPS program educational workshops that are open to the public. The workshops

shall include, at a minimum, at least 1 physician presenter who is licensed under article 15 and is knowledgeable about RSD/CRPS.

(3) The department may accept and utilize federal or state funds or other public or private grants, gifts, donations, or appropriations to carry out the purposes of this section, including, but not limited to, promoting research to accurately identify, diagnose, and treat this disease.

This act is ordered to take immediate effect.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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**[No. 679]**

**(HB 5608)**

AN ACT entering into the interstate insurance product regulation compact; and for related purposes.

*The People of the State of Michigan enact:*

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

ARTICLE I. PURPOSES

**3.1031 Interstate insurance product regulation compact.**

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.
2. To develop uniform standards for insurance products covered under the compact.
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related to those products, submitted by insurers authorized to do business in 1 or more compacting states.
4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact.
6. To create the interstate insurance product regulation commission.
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

## ARTICLE II. DEFINITIONS

For purposes of this compact:

1. “Advertisement” means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

2. “Bylaws” means those bylaws established by the commission for its governance or for directing or controlling the commission’s actions or conduct.

3. “Compacting state” means any state which has enacted this compact legislation and which has not withdrawn pursuant to article XIV, section 1 of this compact, or been terminated pursuant to article XIV, section 2 of this compact.

4. “Commission” means the “interstate insurance product regulation commission” established by this compact.

5. “Commissioner” means the chief insurance regulatory official of a state, including, but not limited to, commissioner, superintendent, director, or administrator.

6. “Domiciliary state” means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

7. “Insurer” means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

8. “Member” means the commissioner, or his or her designee.

9. “Non-compacting state” means any state that is not at the time a compacting state.

10. “Operating procedures” means procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact.

11. “Product” means the form of a policy or contract, including any application, endorsement, or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

12. “Rule” means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII of this compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

13. “State” means any state, district, or territory of the United States of America.

14. “Third-party filer” means an entity that submits a product filing to the commission on behalf of an insurer.

15. “Uniform standard” means a standard adopted by the commission for a product line, pursuant to article VII of this compact, and shall include all of the product requirements in aggregate; provided, that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

## ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The compacting states hereby create and establish a joint public agency known as the “interstate insurance product regulation commission”. Pursuant to article IV of this compact,

the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of filed products, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This compact does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate and politic and an instrumentality of the compacting states.

3. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

4. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

#### ARTICLE IV. POWERS OF THE COMMISSION

The commission shall have the following powers:

1. To promulgate rules, pursuant to article VII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

2. To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related to those products, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided, that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII of this compact, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the national association of insurance commissioners' long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

3. To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact.

4. To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the com-

mission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact.

5. To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

6. To promulgate operating procedures, pursuant to article VII of this compact, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

7. To bring and prosecute legal proceedings or actions in its name as the commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

9. To establish and maintain offices.

10. To purchase and maintain insurance and bonds.

11. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state.

12. To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety.

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety.

15. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

16. To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures.

17. To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

18. To provide for dispute resolution among compacting states.

19. To advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of this compact.

20. To provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments.

21. To establish a budget and make expenditures.

22. To borrow money.

23. To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

24. To provide and receive information from, and to cooperate with, law enforcement agencies.

25. To adopt and use a corporate seal.

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

## ARTICLE V. ORGANIZATION OF THE COMMISSION

### 1. Membership, Voting, and Bylaws

a. Each compacting state shall have and be limited to 1 member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state where the vacancy exists. Nothing in this compact shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

b. Each member shall be entitled to 1 vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this compact to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless 2/3 of the members vote in favor of it.

c. The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to, all of the following:

i. Establishing the fiscal year of the commission.

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

iii. Providing reasonable standards and procedures: for the establishment and meetings of other committees, and governing any general or specific delegation of any authority or function of the commission.

iv. Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed and votes taken during such meeting.

v. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission.

vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

viii. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations.

d. The commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

## 2. Management Committee, Officers, and Personnel

a. A management committee comprising no more than 14 members shall be established as follows:

i. One member from each of the 6 compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year.

ii. Four members from those compacting states with at least 2% of the market based on the premium volume described above, other than the 6 compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

iii. Four members from those compacting states with less than 2% of the market, based on the premium volume described above, with 1 selected from each of the 4 zone regions of the national association of insurance commissioners as provided in the bylaws.

b. The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

i. Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by 2/3 of the members of the management committee.

iii. Overseeing the offices of the commission.

iv. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

c. The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

d. The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

## 3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the

commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

b. The commission shall establish 2 advisory committees, 1 of which shall comprise consumer representatives independent of the insurance industry and the other comprising insurance industry representatives.

c. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

#### 4. Corporate Records of the Commission

The commission shall maintain its corporate books and records in accordance with the bylaws.

#### 5. Qualified Immunity, Defense, and Indemnification

a. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that nothing in this compact shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

### ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

2. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.



ARTICLE VII. RULES & OPERATING PROCEDURES:  
RULEMAKING FUNCTIONS OF THE COMMISSION  
AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking authority. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted under this compact, then such an action by the commission shall be invalid and have no force and effect.

2. Rulemaking procedure. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective date and opt out of a uniform standard. A uniform standard shall become effective 90 days after its promulgation by the commission or such later date as the commission may determine; provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments to those rules and operating procedures, shall become effective as of the date specified in each rule, operating procedure, or amendment.

4. Opt out procedure. A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must give written notice to the commission no later than 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state, and find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact and the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of opt out. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until

such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV of this compact for withdrawals.

6. Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension may postpone the effective date by up to 90 days, unless affirmatively extended by the commission; provided, a stay may not be permitted to remain in effect for more than 1 year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

7. Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

#### ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission; provided, that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

3. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall

notify any non-complying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a non-complying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV of this compact.

4. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

b. Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

#### ARTICLE IX. DISPUTE RESOLUTION

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between 2 or more compacting states, or between compacting states and non-compacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

#### ARTICLE X. PRODUCT FILING AND APPROVAL

1. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state where the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

2. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision in this compact to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

3. Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

#### ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third party filer whose filing

was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 4.

2. The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in section 1 above.

## ARTICLE XII. FINANCE

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

2. The commission shall collect a filing fee from each insurer and third party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII of this compact.

4. The commission shall be exempt from all taxation in and by the compacting states.

5. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request, provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

## ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

1. Any state is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by 2 compacting states; provided, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than 40% of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

#### ARTICLE XIV. WITHDRAWAL, DEFAULT, AND TERMINATION

##### 1. Withdrawal

a. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact (“withdrawing state”) by enacting a statute specifically repealing the statute that enacted the compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of those products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph e. of this section.

c. The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

d. The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice of the introduction of withdrawing legislation.

e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission’s approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

##### 2. Default

a. If the commission determines that any compacting state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to,

failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

b. Product approvals by the commission or product self-certifications, or any advertisement in connection with that product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 1 of this article.

c. Reinstatement following termination of any compacting state requires a reenactment of the compact.

### 3. Dissolution of Compact

a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to 1 compacting state.

b. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

## ARTICLE XV. SEVERABILITY AND CONSTRUCTION

1. The provisions of this compact shall be severable; and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

## ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

### 1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph b. of this section.

b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission that governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict the access of any person to state courts, remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product, state law relating to the construction of insurance contracts, or the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual states shall be subject to the laws of those states.

### 2. Binding Effect of This Compact

a. All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

b. All agreements between the commission and the compacting states are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency to which those obligations, duties, powers, or jurisdiction is delegated by law in effect at the time this compact becomes effective.

This act is ordered to take immediate effect.

Approved January 8, 2007.

Filed with Secretary of State January 10, 2007.

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**[No. 680]**

**(HB 6173)**

AN ACT to amend 1976 PA 451, entitled “An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts,” by amending sections 1230, 1230a, 1230c, 1230d, 1230g, 1351, 1535a, and 1539b (MCL 380.1230, 380.1230a, 380.1230c, 380.1230d, 380.1230g, 380.1351, 380.1535a, and 380.1539b), sections 1230, 1230a, 1230c, 1230d, 1230g, 1535a, and 1539b as amended by 2006 PA 84 and section 1351 as amended by 2003 PA 299, and by adding section 1230e.

*The People of the State of Michigan enact:*

**380.1230 Offer of full-time, part-time, or contract employment; criminal history check; employment as conditional employee; conditions; voiding contract and terminating employment; position as substitute teacher; report received by another district; consent; request; conducting criminal history check; report; disclosure of conviction of listed offense or felony; verification; use; disclosure; violation as misdemeanor; penalty; exception; verification information; definitions.**

Sec. 1230. (1) Except as otherwise provided in this section, upon an offer of initial employment being made by the board of a school district or intermediate school district or the

governing body of a public school academy or nonpublic school to an individual for any full-time or part-time employment or when school officials learn that an individual is being assigned to regularly and continuously work under contract in any of its schools, the district, public school academy, or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and, before employing the individual as a regular employee or allowing the individual to regularly and continuously work under contract in any of its schools, shall have received from the department of state police the report described in subsection (8).

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual or to allow an individual to regularly and continuously work under contract for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee or conditionally allow the individual to regularly and continuously work under contract under this subsection without first receiving the report described in subsection (8) if all of the following apply:

(a) The board or governing body requests the criminal history check required under subsection (1) before conditionally employing the individual or conditionally allowing the individual to regularly and continuously work under contract in any of its schools.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the report described in subsection (8) is not the same as the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the report described in subsection (8) is not the same as the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, or for an individual who regularly and continuously works under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school, if the applicant or individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal history check with another district, public school academy, or nonpublic school, then instead of requesting a criminal history check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use a report received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the applicant or individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the applicant or individual.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the report described in subsection (8) with another district, public school academy, or nonpublic



school, a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the report described in subsection (8) from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal history check required under this section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the criminal records division of the department of state police for a criminal history check required under this section on a form and in a manner prescribed by the criminal records division of the department of state police.

(8) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check on an individual under this section, the criminal records division of the department of state police shall conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain any criminal history record information on the individual maintained by the criminal records division of the department of state police. A school district, intermediate school district, public school academy, or nonpublic school that receives a report from the department of state police under this subsection shall retain that report in the individual's employment records.

(9) If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), discloses that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the report received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (8), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), discloses that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the governing board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing. If a school district, intermediate school district, public school academy, or nonpublic school receives results described in this subsection, within 60 days after receiving those results the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(10) Criminal history record information received from the criminal records division of the department of state police under subsection (8) shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of

evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose the report or its contents received under this section, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the applicant's qualifications for employment or assignment. However, for the purposes of subsections (4) and (5), a person described in this subsection may confirm to an employee of another district, public school academy, or nonpublic school that a report under subsection (8) has revealed that an individual does not have any criminal history or may disclose that no report under subsection (8) has been received concerning the individual, and for the purposes of subsections (4), (5), and (12), a person described in this subsection may provide a copy of the report under subsection (8) concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. For an individual who is regularly and continuously working under contract, if the individual agrees in writing, a district, public school academy, or nonpublic school may provide a copy of the results received under this section concerning the individual to an appropriate representative of the individual's employer. A representative of the individual's employer who receives a copy of a report, or receives results of a report from another source as authorized by this subsection, shall not disclose the report or its contents or the results of the report to any person outside of the employer's business or to any of the employer's personnel who are not directly involved in evaluating the individual's qualifications for employment or assignment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804. As used in this subsection, "misdemeanor conviction involving sexual or physical abuse" includes, but is not limited to, a misdemeanor conviction for a listed offense; a misdemeanor conviction for violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a; a misdemeanor conviction for violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701; a misdemeanor conviction for violation of section 81, 81a, 81c, 90c, 136b, 141a, 145, 145d, 145n, 233, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c, 750.90c, 750.136b, 750.141a, 750.145, 750.145d, 750.145n, 750.233, 750.335a, and 750.411h; a misdemeanor conviction of section 6 of 1979 PA 53, MCL 752.796; or a misdemeanor conviction for violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(11) Subject to subsection (12), if the criminal history check required under this section has been completed for a particular individual and the results reported to a school district, intermediate school district, public school academy, or nonpublic school as provided under this section, then another criminal history check is not required under this section for that individual as long as the individual remains employed with no separation from service by any school district, intermediate school district, public school academy, or nonpublic school in this state or remains regularly and continuously working under contract with no separation from service for the same employer in any school district, intermediate school district, public school academy, or nonpublic school in this state. For the purposes of this subsection, an employee is not considered to have a separation from service in any of the following circumstances:

(a) The employee is laid off or placed on a leave of absence by his or her employer and returns to active employment with the same employer within 1 year after being laid off or placed on the leave of absence.

(b) The employee transfers to another school district, intermediate school district, public school academy, or nonpublic school and remains continuously employed by any school district, intermediate school district, public school academy, or nonpublic school in this state.

(12) If an individual described in subsection (11) is an applicant for employment in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal history check or that currently is in possession of the results of the criminal history check, or is being assigned to regularly and continuously work under contract in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal history check or that currently is in possession of the results of the criminal history check, then all of the following apply:

(a) If the results of the individual's criminal history check have not already been forwarded to the new school district, intermediate school district, public school academy, or nonpublic school, the new school district, intermediate school district, public school academy, or nonpublic school shall request the school district, intermediate school district, public school academy, or nonpublic school that has the results to forward them to the new school district, intermediate school district, public school academy, or nonpublic school. Upon receipt of such a request, a school district, intermediate school district, public school academy, or nonpublic school that has the results shall forward them to the requesting school district, intermediate school district, public school academy, or nonpublic school.

(b) If the results of the individual's criminal history check are not received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then this section applies to the individual to the same extent as if he or she has had a separation from service.

(c) If the results of the individual's criminal history check are received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then that school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that individual using the department of state police's internet criminal history access tool (ICHAT), ensuring that this criminal history check is based on the personal identifying information, including at least the individual's name, sex, and date of birth, that was associated with the results received from the previous school district, intermediate school district, public school academy, or nonpublic school.

(d) If the search of the department of state police's ICHAT under subdivision (c) reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT under subdivision (c) reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(13) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of a school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in a school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(14) For the purposes of subsections (9) and (13), the department shall make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

(15) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(c) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(d) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(e) "Regularly and continuously work under contract" means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(f) “School property” means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**380.1230a Criminal records check through federal bureau of investigation; employment as conditional employee; voiding contract and terminating employment; application as substitute teacher; obtaining copy of results from another district, public school academy, or nonpublic school; consent; form and manner of request; use and disclosure of results; violation as misdemeanor; penalty; definition; initiation of criminal records check by department of state police; disclosure that individual convicted of listed offense or other felony; verification; exception; verification information; definitions.**

Sec. 1230a. (1) In addition to the criminal history check required under section 1230, the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school shall request the department of state police to conduct a criminal records check through the federal bureau of investigation on an applicant for, or an individual who is hired for, any full-time or part-time employment or who is assigned to regularly and continuously work under contract in any of its schools. Except as otherwise provided in this section, a board or governing body shall not employ an individual or allow an individual to regularly and continuously work under contract in any of its schools until after the board or governing body receives the results of the criminal records check. A board or governing body requesting a criminal records check under this section shall require the individual to submit his or her fingerprints to the department of state police for that purpose. The department of state police may charge a fee for conducting the criminal records check. Subject to section 1230g, a board or governing body shall require an individual to submit his or her fingerprints for the purposes of this section only at the time the individual initially applies for employment with the board or governing body or is initially employed by the board or governing body or is initially assigned to regularly and continuously work under contract in any of its schools.

(2) If the board of a school district or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to hire an individual or to allow an individual to regularly and continuously work under contract for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee or conditionally allow the individual to regularly and continuously work under contract under this subsection without first receiving the results of the criminal records check under subsection (1) if all of the following apply:

(a) The board or governing body requests the criminal records check under subsection (1) before conditionally employing the individual or conditionally allowing the individual to regularly and continuously work under contract in any of its schools.

(b) The individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agreeing that, if the results of the criminal records check under subsection (1) reveal information that is inconsistent with the individual's statement, his or her employment contract is voidable at the option of the board or governing body. The department shall develop and distribute to districts and nonpublic schools a model form for the statement required under this subdivision. The department shall make the model form available to public school academies. A district, public school academy, or nonpublic school shall use the model form for the purposes of this subsection.

(3) If an individual is employed as a conditional employee under subsection (2) and the results of the criminal records check under subsection (1) reveal information that is incon-

sistent with the individual's statement under subsection (2), the board or governing body may void the individual's employment contract. If an employment contract is voided under this subsection, the individual's employment is terminated, a collective bargaining agreement that would otherwise apply to the individual's employment does not apply to the termination, and the district, public school academy, or nonpublic school or the board or governing body is not liable for the termination.

(4) For an applicant for a position as a substitute teacher, or for an individual who regularly and continuously works under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school, if the applicant or individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then instead of requesting a criminal records check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school or maintained by the department to confirm that the applicant or individual does not have any criminal history. If that confirmation is not available, subsection (1) applies to the applicant or individual.

(5) If an applicant is being considered for employment by more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the applicant agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal records check from another district, public school academy, or nonpublic school.

(6) An applicant for employment shall give written consent at the time of application for the criminal records division of the department of state police to conduct the criminal records check required under this section.

(7) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for a criminal records check under this section on a form and in a manner prescribed by the department of state police.

(8) The results of a criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12). A member of the board of a district or of the governing body of a public school academy or nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results received under this section, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the individual's qualifications for employment or assignment. However, for the purposes of subsections (4), (5), and (12) a person described in this subsection may provide a copy of the results received under this section concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. For an individual who is regularly and continuously working under contract, if the individual agrees in writing, a district, public school academy, or nonpublic school may provide a copy of the results received under this section concerning the individual to an appropriate representative of the individual's employer. A representative of the individual's employer who receives a copy of the results, or receives the results from another source as authorized by this subsection, shall not disclose the results to any person outside of the employer's business or to any of the employer's personnel who are not directly involved in evaluating the individual's qualifications for employment

or assignment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804. As used in this subsection, “misdemeanor conviction involving sexual or physical abuse” includes, but is not limited to, a misdemeanor conviction for a listed offense; a misdemeanor conviction for violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a; a misdemeanor conviction for violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701; a misdemeanor conviction for violation of section 81, 81a, 81c, 90c, 136b, 141a, 145, 145d, 145n, 233, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c, 750.90c, 750.136b, 750.141a, 750.145, 750.145d, 750.145n, 750.233, 750.335a, and 750.411h; a misdemeanor conviction of section 6 of 1979 PA 53, MCL 752.796; or a misdemeanor conviction for violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(9) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal records check on an individual under this section, the criminal records division of the department of state police shall initiate the criminal records check through the federal bureau of investigation. After conducting the criminal records check required under this section for a school district, intermediate school district, public school academy, or nonpublic school, the criminal records division of the department of state police shall provide the results of the criminal records check to the district, public school academy, or nonpublic school. A school district, intermediate school district, public school academy, or nonpublic school that receives results from the department of state police under this subsection shall retain those results in the individual’s employment records.

(10) If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9), or a report received under section 1230, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (9), or a report received under section 1230, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the governing board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing. If a school district, intermediate school district, public school academy, or nonpublic school receives results described in this subsection, within 60 days after receiving those results the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(11) Subject to subsection (12), if the criminal records check required under this section has been completed for a particular individual and the results reported to a school district, intermediate school district, public school academy, or nonpublic school as provided

under this section, then another criminal records check is not required under this section for that individual as long as the individual remains employed with no separation from service by any school district, intermediate school district, public school academy, or nonpublic school in this state or remains regularly and continuously working under contract with no separation from service for the same employer in any school district, intermediate school district, public school academy, or nonpublic school in this state. For the purposes of this subsection, an employee is not considered to have a separation from service in any of the following circumstances:

(a) The employee is laid off or placed on a leave of absence by his or her employer and returns to active employment with the same employer within 1 year after being laid off or placed on the leave of absence.

(b) The employee transfers to another school district, intermediate school district, public school academy, or nonpublic school and remains continuously employed by any school district, intermediate school district, public school academy, or nonpublic school in this state.

(12) If an individual described in subsection (11) is an applicant for employment in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal records check or that currently is in possession of the results of the criminal records check, or is being assigned to regularly and continuously work under contract in a different school district, intermediate school district, public school academy, or nonpublic school than the one that originally received the results of the criminal records check or that currently is in possession of the results of the criminal records check, then all of the following apply:

(a) If the results of the individual's criminal records check have not already been forwarded to the new school district, intermediate school district, public school academy, or nonpublic school, the new school district, intermediate school district, public school academy, or nonpublic school shall request the school district, intermediate school district, public school academy, or nonpublic school that has the results to forward them to the new school district, intermediate school district, public school academy, or nonpublic school. Upon receipt of such a request, a school district, intermediate school district, public school academy, or nonpublic school that has the results shall forward them to the requesting school district, intermediate school district, public school academy, or nonpublic school.

(b) If the results of the individual's criminal records check are not received by the new school district, intermediate school district, public school academy, or nonpublic school under this subsection or otherwise, then this section applies to the individual to the same extent as if he or she has had a separation from service.

(13) Subsection (1) does not apply to an individual who is being employed by or assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of a school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in a school district, intermediate school district, public school academy, or nonpublic school. However, before employing the individual or assigning the individual to regularly and continuously work under contract in a school, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if



the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(14) For the purposes of subsections (10) and (13), the department shall make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

(15) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Regularly and continuously work under contract" means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(e) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

### **380.1230c Notice of conviction of listed offense; report to department; employment prohibited; definitions.**

Sec. 1230c. (1) If a school official of a school district, intermediate school district, public school academy, or nonpublic school has notice from an authoritative source that an individual has been convicted of a listed offense, the board of the school district or intermediate school district, board of directors of the public school academy, or governing board of the nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ that individual in any capacity or allow that person to regularly and continuously work under contract in any of its schools. If a school district, intermediate school district, public school academy, or nonpublic school receives notice described in this subsection, within 60 days after receiving that notice the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report

detailing the information received and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(2) As used in this section:

(a) “At school” means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) “Listed offense” means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(c) “Regularly and continuously work under contract” means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(d) “School property” means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**380.1230d Employee or applicant for employment of school district, intermediate school district, public school academy, or nonpublic school charged with crime; requirements; violation of subsection (1) or (2); person not convicted of crime; forwarding of form; development and implementation of automated program; report; definitions.**

Sec. 1230d. (1) If a person who is employed in any capacity by a school district, intermediate school district, public school academy, or nonpublic school; who has applied for a position with a school district, intermediate school district, public school academy, or nonpublic school and has had an initial criminal history check under section 1230a; or who is regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school, is charged with a crime listed in section 1535a(1) or 1539b(1) or a violation of a substantially similar law of another state, a political subdivision of this state or another state, or of the United States, the person shall report to the department and to the school district, intermediate school district, public school academy, or nonpublic school that he or she has been charged with the crime. All of the following apply to this reporting requirement:

(a) The person shall make the report on a form prescribed by the department.

(b) The person shall submit the report to the department and to the superintendent of the school district or intermediate school district or chief administrator of the public school academy or nonpublic school.

(c) The person shall submit the report within 3 business days after being arraigned for the crime.

(2) If a person who is employed in any capacity by or is regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school enters a plea of guilt or no contest to or is the subject of a finding of guilt by a judge or jury of any crime after having been initially charged with a crime described

in section 1535a(1) or 1539b(1), then the person immediately shall disclose to the court, on a form prescribed by the state court administrative office, that he or she is employed by or regularly and continuously working under contract in a school district, intermediate school district, public school academy, or nonpublic school. The person shall immediately provide a copy of the form to the prosecuting attorney in charge of the case, to the superintendent of public instruction, and to the superintendent or chief administrator of the school district, intermediate school district, public school academy, or nonpublic school.

(3) A person who violates subsection (1) or (2) is guilty of a crime, as follows:

(a) If the person violates either subsection (1) or (2) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates either subsection (1) or (2) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(4) A person who violates subsection (1) or (2) may be discharged from his or her employment or have his or her contract terminated. If the board of a school district or intermediate school district or board of directors of a public school academy finds, after providing notice and the opportunity for a hearing, that a person employed by the school district, intermediate school district, or public school academy has violated subsection (1) or (2), the board or board of directors may discharge the person from his or her employment. However, if a collective bargaining agreement that applies to the affected person is in effect as of January 1, 2006, and if that collective bargaining agreement is not in compliance with this subsection, then this subsection does not apply to that school district, intermediate school district, or public school academy until after the expiration of that collective bargaining agreement.

(5) If a person submits a report that he or she has been charged with a crime, as required under subsection (1), and the person is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that charge, then the person may request the department and the school district, intermediate school district, public school academy, or nonpublic school to delete the report from its records concerning the person. Upon receipt of the request from the person and of documentation verifying that the person was not convicted of any crime after the completion of judicial proceedings resulting from that charge, the department or a school district, intermediate school district, public school academy, or nonpublic school shall delete the report from its records concerning the person.

(6) If the prosecuting attorney in charge of a case receives a form as provided under subsection (2), the prosecuting attorney shall notify the superintendent of public instruction and the superintendent or chief administrator of any school district, intermediate school district, public school academy, or nonpublic school in which the person is employed by forwarding a copy of the form to each of them not later than 7 days after receiving the form. If the court receives a form as provided under subsection (2), the court shall notify the superintendent of public instruction and the superintendent or chief administrator of any school district, intermediate school district, public school academy, or nonpublic school in which the person is employed by forwarding to each of them a copy of the form and information regarding the sentence imposed on the person not later than 7 days after the date of sentencing, even if the court is maintaining the file as a nonpublic record.

(7) The department of information technology shall work with the department and the department of state police to develop and implement an automated program that does a

comparison of the department's list of registered educational personnel, and of any other list maintained by the department of individuals employed or regularly and continuously working under contract in a school, with the conviction information received by the department of state police. This comparison shall only include individuals who are actually school employees at the time of the comparison or who are regularly and continuously working under contract at the time of the comparison. Unless otherwise prohibited by law, this comparison shall include convictions contained in a nonpublic record. The department and the department of state police shall perform this comparison during January and June of each year until July 1, 2008. The department of state police shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before transmitting the information under this subsection to the department. The department shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before notifying a school district, intermediate school district, public school academy, or nonpublic school of a conviction. If a comparison discloses that a person on the department's list of registered educational personnel has been convicted of a crime, or if the department is otherwise notified by the department of state police that such a person has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.

(8) If a school district, intermediate school district, public school academy, or nonpublic school receives a report under this section of a conviction, within 60 days after receiving the report the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information received and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(9) As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Regularly and continuously work under contract" means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(e) "School property" means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**380.1230e List of registered educational personnel; definitions.**

Sec. 1230e. (1) Not later than January 1, 2007, the department shall include in its list of registered educational personnel all individuals who are employed by a school district, intermediate school district, public school academy, or nonpublic school and all individuals who are assigned to regularly and continuously work under contract in a school operated by a school district, intermediate school district, public school academy, or nonpublic school.

(2) As used in this section:

(a) “At school” means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) “Regularly and continuously work under contract” means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(c) “School property” means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

**380.1230g Individual employed or working under contract; criminal history check or records check; use of results received by another district; consent; request; use of results for limited purpose; “misdemeanor conviction involving sexual or physical abuse” defined; duties of department of state police; verification; disclosure of conviction for listed offense or other felony; exception; definitions.**

Sec. 1230g. (1) Not later than July 1, 2008, the board of a school district or intermediate school district, the board of directors of a public school academy, or the governing body of a nonpublic school shall do both of the following for each individual who, as of December 1, 2005, is either a full-time or part-time employee of the school district, intermediate school district, public school academy, or nonpublic school or is assigned to regularly and continuously work under contract in any of its schools and who either is still a full-time or part-time employee of the school district, intermediate school district, public school academy, or nonpublic school on the date that the criminal history and criminal records checks under this section are initiated or is still assigned to regularly and continuously work under contract in any of its schools on the date that the criminal history and criminal records checks under this section are initiated:

(a) Request from the criminal records division of the department of state police a criminal history check on the individual.

(b) Request the department of state police to conduct a criminal records check on the individual through the federal bureau of investigation. The board, board of directors, or governing board shall require the individual to submit his or her fingerprints to the department of state police for the purposes of this subdivision. The department of state police may charge a fee for conducting the criminal records check.

(2) For an individual employed or regularly and continuously working under contract as a substitute teacher, if the individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal history check or criminal records check with another district, public school academy, or nonpublic school, then instead of requesting a criminal history check and criminal records check under subsection (1), a school district, intermediate school district, public school academy, or nonpublic school may use results received by another district, public school academy, or nonpublic school to confirm that the individual does not have any criminal history. Alternatively, a school district, intermediate school district, public school academy, or nonpublic school may use results maintained by the department to confirm that the individual does not have any criminal history. If confirmation is not available from any of these sources, subsection (1) applies to the individual.

(3) If an individual described in subsection (1) is employed by or regularly and continuously working under contract in more than 1 school district, intermediate school district, public school academy, or nonpublic school and if the individual agrees in writing to allow a district, public school academy, or nonpublic school to share the results of the criminal history check or criminal records check with another district, public school academy, or nonpublic school, then a district, public school academy, or nonpublic school may satisfy the requirements of subsection (1) by obtaining a copy of the results of the criminal history check or criminal records check from another district, public school academy, or nonpublic school.

(4) An individual described in subsection (1) shall give written consent for the criminal records division of the department of state police to conduct the criminal history check and criminal records check required under this section and shall submit his or her fingerprints to the department of state police for the purposes of the criminal records check. If an individual does not comply with this subsection or otherwise fails to cooperate with a school district, intermediate school district, public school academy, or nonpublic school that is seeking to comply with subsection (1) concerning the individual, then the school district, intermediate school district, public school academy, or nonpublic school shall not employ the individual in any capacity and shall not allow the individual to regularly and continuously work under contract in any of its schools.

(5) A school district, intermediate school district, public school academy, or nonpublic school shall make a request to the department of state police for the criminal history check and criminal records check under this section on a form and in a manner prescribed by the department of state police.

(6) The results of a criminal history check and criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in his or her position and for the purposes of subsections (2) and (3). A member of the board of a school district or intermediate school district, of the board of directors of a public school academy, or of the governing body of a nonpublic school or an employee of a district, public school academy, or nonpublic school shall not disclose those results received under this section, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who is not directly involved in evaluating the individual's qualifications for employment or assignment. However, for the purposes of subsections (2) and (3), a person described in this subsection may provide a copy of the results received under this section concerning the individual to an appropriate representative of another district, public school academy, or nonpublic school. For an individual who is regularly and continuously working under contract, if the individual agrees in writing, a district, public school academy, or nonpublic school may provide a copy of the

results received under this section concerning the individual to an appropriate representative of the individual's employer. A representative of the individual's employer who receives a copy of the results, or receives the results from another source as authorized by this subsection, shall not disclose the results to any person outside of the employer's business or to any of the employer's personnel who are not directly involved in evaluating the individual's qualifications for employment or assignment. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00, but is not subject to the penalties under section 1804. As used in this subsection, "misdemeanor conviction involving sexual or physical abuse" includes, but is not limited to, a misdemeanor conviction for a listed offense; a misdemeanor conviction for violation of section 617a of the Michigan vehicle code, 1949 PA 300, MCL 257.617a; a misdemeanor conviction for violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701; a misdemeanor conviction for violation of section 81, 81a, 81c, 90c, 136b, 141a, 145, 145d, 145n, 233, 335a, or 411h of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.81c, 750.90c, 750.136b, 750.141a, 750.145, 750.145d, 750.145n, 750.233, 750.335a, and 750.411h; a misdemeanor conviction of section 6 of 1979 PA 53, MCL 752.796; or a misdemeanor conviction for violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(7) Within 30 days after receiving a proper request by a school district, intermediate school district, public school academy, or nonpublic school for a criminal history check and criminal records check on an individual under this section, the criminal records division of the department of state police shall do both of the following:

(a) Conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the district, public school academy, or nonpublic school. The report shall contain any criminal history record information on the individual that is maintained by the criminal records division of the department of state police. A school district, intermediate school district, public school academy, or nonpublic school that receives a report from the department of state police under this subdivision shall retain that report in the individual's employment records.

(b) Initiate the criminal records check through the federal bureau of investigation. After conducting the criminal records check required under this section for a school district, intermediate school district, public school academy, or nonpublic school, the criminal records division of the department of state police shall provide the results of the criminal records check to the district, public school academy, or nonpublic school. A school district, intermediate school district, public school academy, or nonpublic school that receives results from the department of state police under this subdivision shall retain those results in the individual's employment records.

(8) If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If the results received by a school district, intermediate school district, public school academy, or nonpublic school under subsection (7), or a report received under section 1230a, 1230d(7), 1535a(15), or 1539b(15), disclose that an individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public

records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief administrator and the governing board or governing body, if any, of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing. If a school district, intermediate school district, public school academy, or nonpublic school receives results described in this subsection, within 60 days after receiving those results the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information received and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(9) If the criminal history check and criminal records check required under this section have been completed for a particular individual and the results reported to a school district, intermediate school district, public school academy, or nonpublic school as provided under this section, then another criminal history check or criminal records check is not required under this section for that individual as long as the individual remains employed with no separation from service by any school district, intermediate school district, public school academy, or nonpublic school in this state or remains regularly and continuously working under contract with no separation from service for the same employer in any school district, intermediate school district, public school academy, or nonpublic school in this state. For the purposes of this subsection, an employee is not considered to have a separation from service in any of the following circumstances:

(a) The employee is laid off or placed on a leave of absence by his or her employer and returns to active employment with the same employer within 1 year after being laid off or placed on the leave of absence.

(b) The employee transfers to another school district, intermediate school district, public school academy, or nonpublic school and remains continuously employed by any school district, intermediate school district, public school academy, or nonpublic school in this state.

(10) Subsection (1) does not apply to an individual who is an employee or is assigned to regularly and continuously work under contract in a school of a school district, intermediate school district, public school academy, or nonpublic school if the individual is not more than 19 years of age and is enrolled as a general education pupil of a school district, intermediate school district, public school academy, or nonpublic school or is not more than 26 years of age and is enrolled in special education programs or services in a school district, intermediate school district, public school academy, or nonpublic school. However, the school district, intermediate school district, public school academy, or nonpublic school shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT). If a search of the department of state police's ICHAT reveals that the individual has been convicted of a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity, as provided under section 1230c, and shall not allow the individual to regularly and continuously work under contract in any of its schools. If a search of the department of state police's ICHAT reveals that the individual has been convicted of a felony other than a listed offense, then the school district, intermediate school district, public school academy, or nonpublic school shall take steps to verify that information using public records and, if the information is verified using public records, shall not employ the individual in any capacity or allow the individual to regularly and continuously work under contract in any of its schools unless the superintendent or chief



administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school each specifically approves the employment or work assignment in writing.

(11) For the purposes of subsections (8) and (10), the department shall make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

(12) As used in this section:

(a) “At school” means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) “Felony” means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) “Listed offense” means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) “Regularly and continuously work under contract” means any of the following:

(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(e) “School property” means that term as defined in section 33 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

### **380.1351 Borrowing money and issuing bonds; purposes; limitations; bonds or notes as full faith and credit tax limited obligations.**

Sec. 1351. (1) Until May 1, 1994, a school district may borrow money and issue bonds of the district to defray all or a part of the cost of purchasing, erecting, completing, remodeling, improving, furnishing, refurbishing, equipping, or reequipping school buildings, including library buildings, structures, athletic fields, playgrounds, or other facilities, or parts of or additions to those facilities; acquiring, preparing, developing, or improving sites, or parts of or additions to sites, for school buildings, including library buildings, structures, athletic fields, playgrounds, or other facilities; purchasing school buses; participating in the administrative costs of an urban renewal program through which the school district desires to acquire a site or addition to a site for school purposes; refunding all or part of existing bonded indebtedness; or accomplishing a combination of the purposes set forth in this subsection. In addition, until December 31, 1991 a school district may borrow money and issue bonds to defray all or part of the cost of purchasing textbooks.

(2) Except as otherwise provided in this subsection, a school district shall not borrow money or issue bonds for a sum that, together with the total outstanding bonded indebtedness of the district, exceeds 5% of the state equalized valuation of the taxable property within the district, unless the proposition of borrowing the money or issuing the bonds is submitted to a vote of the school electors of the district at a regular or special school election and approved by the majority of the school electors voting on the question. Regardless of the amount of outstanding bonded indebtedness of the school district, a vote of the school

electors is not necessary in order to issue bonds for a purpose described in section 1274a, to issue bonds under section 11i of the state school aid act of 1979, MCL 388.1611i, or, if the school district has fewer than 1,100 pupils in membership in 2006 and is located in a county with a population of less than 30,500 as of the 2000 decennial census, to issue qualified zone academy bonds. For the purposes of this subsection, the following types of bonds shall not be included in computing the total outstanding bonded indebtedness of a school district:

(a) Bonds issued under section 11i of the state school aid act of 1979, MCL 388.1611i.

(b) If the school district has fewer than 1,100 pupils in membership in 2006 and is located in a county with a population of less than 30,500 as of the 2000 decennial census, qualified zone academy bonds.

(3) A school district shall not issue bonds under this part for an amount greater than 15% of the total assessed valuation of the district, except as provided in section 1356. A bond qualified under section 16 of article IX of the state constitution of 1963 and implementing legislation shall not be included for purposes of calculating the 15% limitation. Bonds issued under this part are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, except that bonds issued for a purpose described in section 1274a may be sold at a public or publicly negotiated sale at the time or times, at the price or prices, and at a discount as determined by the board of the school district.

(4) Bonds or notes issued by a school district or intermediate school district under this part or section 442, 629, or 1274a shall be full faith and credit tax limited obligations of the district pledging the general funds, voted and allocated tax levies, or any other money available for such a purpose and shall not allow or provide for the levy of additional millage for payment of the bond or note without a vote of the qualified electorate of the district.

(5) As used in this section, “qualified zone academy bond” means that term as defined in section 1397e of the internal revenue code, 26 USC 1397e.

**380.1535a Conviction of teacher for certain crimes; notice of right to hearing; suspension of teaching certificate; summary suspension; findings for action under subsection (1) or (2); compensation; reinstatement, continued suspension, or permanent revocation of teaching certificate; effect of reversal of conviction on final appeal; notice of conviction; evidence of conviction; failure to make final decision and order; construction of section; rules; comparison of individuals holding teaching certificate with conviction information; definitions.**

Sec. 1535a. (1) Subject to subsection (2), if a person who holds a teaching certificate that is valid in this state has been convicted of a crime described in this subsection, within 10 working days after receiving notice of the conviction the superintendent of public instruction shall notify the person in writing that his or her teaching certificate may be suspended because of the conviction and of his or her right to a hearing before the superintendent of public instruction. The hearing shall be conducted as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the person does not avail himself or herself of this right to a hearing within 15 working days after receipt of this written notification, the teaching certificate of that person shall be suspended. If a hearing takes place, the superintendent of public instruction shall complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing. Subject to subsection (2), the superintendent of public instruction may suspend the person’s teaching certificate based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) If a person who holds a teaching certificate that is valid in this state has been convicted of a crime described in this subsection, the superintendent of public instruction shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's teaching certificate under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, and shall subsequently provide an opportunity for a hearing as provided under that section. This subsection does not limit the superintendent of public instruction's ability to order summary suspension of a person's teaching certificate for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in the first degree, or an attempt to commit child abuse in the first degree.

(c) Cruelty, torture, or indecent exposure involving a child.

(d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7410, and 333.7416.

(e) A violation of section 83, 89, 91, 145a, 145b, 145c, 316, 317, 350, 448, 455, or 529 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.89, 750.91, 750.145a, 750.145b, 750.145c, 750.316, 750.317, 750.350, 750.448, 750.455, and 750.529, or a felony violation of section 145d of the Michigan penal code, 1931 PA 328, MCL 750.145d.

(f) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, if a victim is an individual less than 18 years of age.

(g) Except for a juvenile disposition or adjudication, a violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, if a victim is an individual less than 18 years of age.

(h) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, if a victim is an individual less than 18 years of age.

(i) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(j) Any other crime that is a listed offense.

(k) An attempt or conspiracy to commit an offense listed in subdivision (a), (e), (f), (g), (h), (i), or (j).

(l) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(m) Any other crime listed in subsection (1), if the superintendent of public instruction determines the public health, safety, or welfare requires emergency action based on the circumstances underlying the conviction.

(3) All of the following apply to any proceedings affecting a person's teaching certificate under this section:

(a) The superintendent of public instruction shall appoint a designee to perform the investigatory and prosecutorial functions involved in the proceedings. However, the superintendent of public instruction must approve any settlement, conditional agreement, or other decision not to proceed with charges.

(b) Any final action that affects the status of a person's teaching certificate shall be taken by the superintendent of public instruction.

(c) The superintendent of public instruction after a hearing shall not take action against a person's teaching certificate under subsection (1) or (2) unless the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state. Further, the superintendent of public instruction may take action against a person's teaching certificate under subsection (1) or (2) based on a conviction that occurred before April 1, 2004 if the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state. For the purposes of this section, conviction of a listed offense is reasonably and adversely related to the person's fitness to serve in an elementary or secondary school in this state and demonstrates that the person is unfit to teach in an elementary or secondary school in this state.

(4) If a person who has entered a plea of guilt or no contest to or who is the subject of a finding of guilt by a judge or jury of a crime listed in subsection (2) has been suspended from active performance of duty by a public school, school district, intermediate school district, or nonpublic school during the pendency of proceedings under this section, the public school, school district, intermediate school district, or nonpublic school employing the person shall discontinue the person's compensation until the superintendent of public instruction has made a final determination of whether or not to suspend or revoke the person's teaching certificate. If the superintendent of public instruction does not suspend or revoke the person's teaching certificate, the public school, school district, intermediate school district, or nonpublic school shall make the person whole for lost compensation, without interest. However, if a collective bargaining agreement is in effect as of January 1, 2006 for employees of a school district, intermediate school district, or public school academy, and if the terms of that collective bargaining agreement are inconsistent with this subsection, then this subsection does not apply to that school district, intermediate school district, or public school academy until after the expiration of that collective bargaining agreement.

(5) Except as otherwise provided in this subsection, after the completion of a person's sentence, the person may request a hearing on reinstatement of his or her teaching certificate. Based upon the issues and evidence presented at the hearing, the superintendent of

public instruction may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate. The superintendent of public instruction shall not reinstate a person's teaching certificate unless the superintendent of public instruction finds that the person is currently fit to serve in an elementary or secondary school in this state and that reinstatement of the person's teaching certificate will not adversely affect the health, safety, and welfare of pupils. If a person's conviction was for a listed offense, the person is not entitled to request a hearing on reinstatement under this subsection, and the superintendent of public instruction shall not reinstate the person's teaching certificate under this subsection.

(6) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's teaching certificate shall be reinstated upon his or her notification to the superintendent of public instruction of the reversal.

(b) If the suspension of the person's teaching certificate under this section was the sole cause of his or her discharge from employment, the person shall be reinstated, upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(c) If the person's compensation was discontinued under subsection (4), the public school, school district, intermediate school district, or nonpublic school shall make the person whole for lost compensation.

(7) If the prosecuting attorney in charge of a case receives a form as provided under section 1230d, the prosecuting attorney shall notify the superintendent of public instruction, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed by forwarding a copy of the form to each of them not later than 7 days after receiving the form. If the court receives a form as provided under section 1230d, the court shall notify the superintendent of public instruction and any public school, school district, intermediate school district, or nonpublic school in which the person is employed by forwarding to each of them a copy of the form and information regarding the sentence imposed on the person not later than 7 days after the date of sentencing, even if the court is maintaining the file as a nonpublic record.

(8) Not later than 7 days after receiving notification from the prosecuting attorney or the court under subsection (7) or learning through an authoritative source that a person who holds a teaching certificate has been convicted of a crime listed in subsection (1), the superintendent of public instruction shall request the court to provide a certified copy of the judgment of conviction and sentence or other document regarding the disposition of the case to the superintendent of public instruction and shall pay any fees required by the court. The court shall provide this certified copy within 7 days after receiving the request and fees under this section or after entry of the judgment or other document, whichever is later, even if the court is maintaining the judgment or other document as a nonpublic record.

(9) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified or learns through an authoritative source that a person who holds a teaching certificate and who is employed by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1) or (2), the superintendent, chief administrative officer, or board president shall notify the superintendent of public instruction of that conviction within 15 days after learning of the conviction.

(10) For the purposes of this section, a certified copy of the judgment of conviction and sentence is conclusive evidence of conviction of a crime described in this section. For the purposes of this section, conviction of a crime described in this section is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's teaching certificate.

(11) For any hearing under subsection (1), if the superintendent of public instruction does not make a final decision and order within 120 working days after receiving the request for the hearing, as required under subsection (1), the superintendent of public instruction shall submit a report detailing the reasons for the delay to the standing committees and appropriations subcommittees of the senate and house of representatives that have jurisdiction over education and education appropriations. The failure of the superintendent of public instruction to make a final decision and order within this 120 working day time limit, or the failure of any other official or agency to meet a time limit prescribed in this section, does not affect the validity of an action taken under this section affecting a person's teaching certificate.

(12) Beginning July 1, 2004, the superintendent of public instruction shall submit to the legislature a quarterly report of all final actions he or she has taken under this section affecting a person's teaching certificate during the preceding quarter. The report shall contain at least all of the following with respect to each person whose teaching certificate has been affected:

(a) The person's name, as it appears on the teaching certificate.

(b) The school district, intermediate school district, public school academy, or nonpublic school in which the person was employed at the time of the conviction, if any.

(c) The offense for which the person was convicted and the date of the offense and date of the conviction.

(d) Whether the action taken by the superintendent of public instruction was a summary suspension, suspension due to failure to request a hearing, suspension, revocation, or reinstatement of the teaching certificate.

(13) This section does not do any of the following:

(a) Prohibit a person who holds a teaching certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a teaching certificate.

(14) The superintendent of public instruction may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) The department of information technology shall work with the department and the department of state police to develop and implement an automated program that does a comparison of the department's list of individuals holding a teaching certificate or state board approval, and of any other list maintained by the department of individuals employed or regularly and continuously working under contract in a school, with the conviction information received by the department of state police. This comparison shall only include individuals who are actually school employees at the time of the comparison or who are regularly and continuously working under contract at the time of the comparison. Unless otherwise pro-

hibited by law, this comparison shall include convictions contained in a nonpublic record. The department and the department of state police shall perform this comparison during January and June of each year until July 1, 2008. The department of state police shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before transmitting the information under this subsection to the department. The department shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before notifying a school district, intermediate school district, public school academy, or nonpublic school of a conviction. If a comparison discloses that a person on the department's list of individuals holding a teaching certificate or state board approval has been convicted of a crime, or if the department is otherwise notified by the department of state police that such a person has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.

(16) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

(e) "Regularly and continuously work under contract" means that term as defined in section 1230d.

**380.1539b Conviction of person holding board approval for certain crimes; notice of right to hearing; suspension; summary suspension; compensation; reinstatement, continued suspension, or permanent revocation of state board approval; notice of conviction; evidence of conviction; failure to complete hearing procedures; construction of section; rules; comparison of individuals holding teaching certificate with conviction information; definitions.**

Sec. 1539b. (1) Subject to subsection (2), if a person who holds state board approval has been convicted of a crime described in this subsection, within 10 working days after receiving notice of the conviction the superintendent of public instruction shall notify the person in writing that his or her state board approval may be suspended because of the conviction and of his or her right to a hearing before the superintendent of public instruction. The hearing shall be conducted as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the person does not avail himself or herself of this right to a hearing within 15 working days after receipt of this written notification, the person's state board approval shall be suspended. If a hearing takes place, the superintendent of public instruction shall complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing. Subject to subsection (2), the superintendent of public instruction may suspend the person's state board

approval, based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) If a person who holds state board approval has been convicted of a crime described in this subsection, the superintendent of public instruction shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's state board approval under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, and shall subsequently provide an opportunity for a hearing as required under that section. This subsection does not limit the superintendent of public instruction's ability to order summary suspension of a person's state board approval for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in the first degree, or an attempt to commit child abuse in the first degree.

(c) Cruelty, torture, or indecent exposure involving a child.

(d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410, or 7416 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7410, and 333.7416.

(e) A violation of section 83, 89, 91, 145a, 145b, 145c, 316, 317, 350, 448, 455, or 529 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.89, 750.91, 750.145a, 750.145b, 750.145c, 750.316, 750.317, 750.350, 750.448, 750.455, and 750.529, or a felony violation of section 145d of the Michigan penal code, 1931 PA 328, MCL 750.145d.

(f) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, if a victim is an individual less than 18 years of age.

(g) Except for a juvenile disposition or adjudication, a violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, if a victim is an individual less than 18 years of age.

(h) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, if a victim is an individual less than 18 years of age.



(i) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(j) Any other crime that is a listed offense.

(k) An attempt or conspiracy to commit an offense listed in subdivision (a), (e), (f), (g), (h), (i), or (j).

(l) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(m) Any other crime listed in subsection (1), if the superintendent of public instruction determines the public health, safety, or welfare requires emergency action based on the circumstances underlying the conviction.

(3) All of the following apply to any proceedings affecting a person's state board approval under this section:

(a) The superintendent of public instruction shall appoint a designee to perform the investigatory and prosecutorial functions involved in the proceedings. However, the superintendent of public instruction must approve any settlement, conditional agreement, or other decision not to proceed with charges.

(b) Any final action that affects the status of a person's state board approval shall be taken by the superintendent of public instruction.

(c) The superintendent of public instruction after a hearing shall not take action against a person's state board approval under subsection (1) or (2) unless the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state. Further, the superintendent of public instruction may take action against a person's state board approval under subsection (1) or (2) based on a conviction that occurred before April 1, 2004 if the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state. For the purposes of this section, conviction of a listed offense is reasonably and adversely related to the person's fitness to serve in an elementary or secondary school in this state and demonstrates that the person is unfit to teach in an elementary or secondary school in this state.

(4) If a person who has entered a plea of guilt or no contest to or who is the subject of a finding of guilt by a judge or jury of a crime listed in subsection (2) has been suspended from active performance of duty by a public school, school district, intermediate school district, or nonpublic school during the pendency of proceedings under this section, the public school, school district, intermediate school district, or nonpublic school employing the person shall discontinue the person's compensation until the superintendent of public instruction has made a final determination of whether or not to suspend or revoke the person's state board approval. If the superintendent of public instruction does not suspend or revoke the person's state board approval, the public school, school district, intermediate school district, or nonpublic school shall make the person whole for lost compensation, without interest. However, if a collective bargaining agreement is in effect as of January 1, 2006 for employees of a school district, intermediate school district, or public school academy, and if the terms of that collective bargaining agreement are inconsistent with this subsection, then this subsection does not apply to that school district, intermediate school district, or public school academy until after the expiration of that collective bargaining agreement.

(5) Except as otherwise provided in this subsection, after the completion of the person's sentence, the person may request a hearing on reinstatement of his or her state board approval. Based upon the issues and evidence presented at the hearing, the superintendent of public instruction may reinstate, continue the suspension of, or permanently revoke the person's state board approval. The superintendent of public instruction shall not reinstate a person's state board approval unless the superintendent of public instruction finds that the person is currently fit to serve in an elementary or secondary school in this state and that reinstatement of the person's state board approval will not adversely affect the health, safety, and welfare of pupils. If a person's conviction was for a listed offense, the person is not entitled to request a hearing on reinstatement under this subsection, and the superintendent of public instruction shall not reinstate the person's state board approval under this subsection.

(6) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's state board approval shall be reinstated upon his or her notification to the superintendent of public instruction of the reversal.

(b) If the suspension of the state board approval was the sole cause of his or her discharge from employment, the person shall be reinstated upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(c) If the person's compensation was discontinued under subsection (4), the public school, school district, intermediate school district, or nonpublic school shall make the person whole for lost compensation.

(7) If the prosecuting attorney in charge of a case receives a form as provided under section 1230d, the prosecuting attorney shall notify the superintendent of public instruction, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed by forwarding a copy of the form to each of them not later than 7 days after receiving the form. If the court receives a form as provided under section 1230d, the court shall notify the superintendent of public instruction and any public school, school district, intermediate school district, or nonpublic school in which the person is employed by forwarding to each of them a copy of the form and information regarding the sentence imposed on the person not later than 7 days after the date of the sentencing, even if the court is maintaining the file as a nonpublic record.

(8) Not later than 7 days after receiving notification from the prosecuting attorney or the court under subsection (7) or learning through an authoritative source that a person who holds state board approval has been convicted of a crime listed in subsection (1), the superintendent of public instruction shall request the court to provide a certified copy of the judgment of conviction and sentence or other document regarding the disposition of the case to the superintendent of public instruction and shall pay any fees required by the court. The court shall provide this certified copy within 7 days after receiving the request and fees under this section or after entry of the judgment or other document, whichever is later, even if the court is maintaining the judgment or other document as a nonpublic record.

(9) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified or learns through an authoritative source that a person who holds state board approval and who is employed by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1) or (2), the superintendent, chief administrative officer, or board president shall notify the superintendent of public instruction of that conviction within 15 days after learning of the conviction.