

(12) If the cost of maintenance and repair of a drain includes utility charges or costs to service pumping stations, sewage treatment facilities, or retention basins, the limitation for maintenance and repair does not apply except that the drain commissioner or drainage board may levy sufficient special assessments to pay the charges or costs but not more than the amount sufficient to pay those charges or costs.

(13) Except as otherwise provided in this act, that portion of the salaries, expenses, and fringe benefits of administrative and engineering employees under the supervision of the drain commissioner that are directly attributable, but not incidental, to a drain or otherwise not recovered by fees established by resolution or ordinance of the board of commissioners may be chargeable to the drain fund of a drainage district.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 510]**

**(SB 1420)**

AN ACT to amend 1975 PA 238, entitled “An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts,” by amending section 3 (MCL 722.623), as amended by 2006 PA 583.

*The People of the State of Michigan enact:*

**722.623 Individual required to report child abuse or neglect; written report; transmitting report to county department; copies to prosecuting attorney and probate court; conditions requiring transmission of report to law enforcement agency; pregnancy of or venereal disease in child less than 12 years of age; exposure to or contact with methamphetamine production.**

Sec. 3. (1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician’s assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master’s social worker, licensed bachelor’s social worker, registered social service technician, social service technician, a person employed in a professional capacity in any office of the friend of the court, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department.

Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school is adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department in the same manner as required under subdivision (a):

- (i) Eligibility specialist.
- (ii) Family independence manager.
- (iii) Family independence specialist.
- (iv) Social services specialist.
- (v) Social work specialist.
- (vi) Social work specialist manager.
- (vii) Welfare services specialist.

(c) Any employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order. A person required to report under this subdivision shall report in the same manner as required under subdivision (a).

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county department of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c, sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, or section 7401c of the public health code, 1978 PA 368, MCL 333.7401c, involving methamphetamine has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent

investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall, within 24 hours of completion, transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.

(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect or discovers evidence of or receives a report of an individual allowing a child to be exposed to or to have contact with methamphetamine production, and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect or allowing a child to be exposed to or to have contact with methamphetamine production, was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county department of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect or allowed a child to be exposed to or to have contact with methamphetamine production, is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.

(9) In conducting an investigation of child abuse or child neglect, if the department suspects that a child has been exposed to or has had contact with methamphetamine production, the department shall immediately contact the law enforcement agency in the county in which the incident occurred.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 511]**

**(SB 1421)**

AN ACT to amend 1975 PA 238, entitled "An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in

certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts,” (MCL 722.621 to 722.638) by adding section 8e.

*The People of the State of Michigan enact:*

**722.628e Investigation checklist.**

Sec. 8e. (1) The department shall implement an investigation checklist to be used in each investigation of suspected abuse and neglect handled by the department.

(2) Subject to subsections (3) and (4), an investigation shall not be closed until the checklist described in subsection (1) is completed.

(3) A supervisor must review the completed checklist. If the supervisor determines that the investigation complies with the investigation checklist and with the following state laws and department policy, the investigation may be closed:

(a) Face-to-face contact was made with all alleged child victims.

(b) A petition was filed as required by sections 8d(1)(e), 17, and 18.

(c) A petition was filed when court intervention was needed to ensure child safety.

(d) Any other items that impact child safety and well-being that are specifically outlined in department policy to require the approvals outlined in subsection (4).

(4) If the supervisor determines that the investigation does not comply with the investigation checklist and the state laws and department policy outlined in subsection (3), the supervisor shall determine the reason the investigation checklist and state law or department policy outlined in subsection (3) were not followed. An investigation that falls under this subsection shall not be closed until after the local office director has reviewed the investigation.

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 512]**

**(SB 1433)**

AN ACT to amend 1893 PA 206, entitled “An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to

provide penalties for the violation of this act; and to repeal acts and parts of acts,” by amending sections 78, 89a, 89b, and 89c (MCL 211.78, 211.89a, 211.89b, and 211.89c), section 78 as added by 1999 PA 123, section 89a as amended and section 89b as added by 2003 PA 246, and section 89c as added by 2007 PA 31, and by adding sections 89d and 89e.

*The People of the State of Michigan enact:*

**211.78 Delinquent taxes; return, forfeiture, and foreclosure of property; construction of act; election to have state foreclose property forfeited to county; definitions.**

Sec. 78. (1) The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property for delinquent taxes constitute the performance by this state or a political subdivision of this state of essential public purposes and functions.

(2) It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States. The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated.

(3) Not later than December 1, 1999, the county board of commissioners of a county, by a resolution adopted at a meeting held pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and with the written concurrence of the county treasurer and the county executive, if any, may elect to have this state foreclose property under this act forfeited to the county treasurer under section 78g. At any time during December 2004, the county board of commissioners of a county, by a resolution adopted at a meeting held pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and with the written concurrence of the county treasurer and county executive, if any, may do either of the following:

(a) Elect to have this state foreclose property under this act forfeited to the county treasurer under section 78g.

(b) Rescind its prior resolution by which it elected to have this state foreclose property under this act forfeited to the county treasurer under section 78g.

(4) Beginning January 1, 2009 through March 1, 2009, the county board of commissioners of a county in which is located an eligible city, as that term is defined in section 89d, may, by a resolution adopted at a meeting held pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and with the written concurrence of the county treasurer and county executive, if any, rescind its prior resolution by which it elected to have this state foreclose property under this act forfeited to the county treasurer under section 78g.

(5) The foreclosure of forfeited property by a county is voluntary and is not an activity or service required of units of local government for purposes of section 29 of article IX of the state constitution of 1963.

(6) A county and a local governmental unit within that county may enter into an agreement for the collection of property taxes or the enforcement and consolidation of tax liens within that local governmental unit. A local governmental unit shall not establish a delinquent tax revolving fund under section 87b.

(7) As used in this section and sections 78a through 155 for purposes of the collection of taxes returned as delinquent:

(a) “Foreclosing governmental unit” means 1 of the following:

(i) The treasurer of a county.

(ii) This state if the county has elected under subsection (3) to have this state foreclose property under this act forfeited to the county treasurer under section 78g.

(b) “Forfeited” or “forfeiture” means a foreclosing governmental unit may seek a judgment of foreclosure under section 78k if the property is not redeemed as provided under this act, but does not acquire a right to possession or any other interest in the property.

**211.89a City with population of 600,000 or more; return of uncollected delinquent taxes to county treasurer; personal liability; right of city to bring in personam action; remittance by county treasurer.**

Sec. 89a. (1) Notwithstanding the provisions of a charter of a county adopted pursuant to 1966 PA 293, MCL 45.501 to 45.521, or the provisions of the charter of a home rule city, to the contrary, the city treasurer of a city with a population of 600,000 or more shall return all uncollected delinquent taxes levied on real property after December 31, 2002 on the March 1 immediately following the year in which the taxes are levied. For the purposes of this section, delinquent taxes include all interest and penalties that accrue after August 15 of the year in which all taxes billed by the city are levied if that interest and penalty remain unpaid on the date the delinquent taxes are returned to the county treasurer.

(2) The city treasurer of a city with a population of 600,000 or more may return all uncollected delinquent taxes levied in 2001, 2002, or 2001 and 2002 to the county treasurer for collection under this section on March 1, 2004. A city treasurer shall provide the county treasurer written notice of his or her intent to return uncollected delinquent taxes levied in 2001 or 2002 under this subsection not later than February 1, 2004. If uncollected delinquent taxes levied in 2001 or 2002 are returned to the county treasurer for collection under this subsection, the county treasurer shall collect those taxes with taxes returned as delinquent in 2004.

(3) After the delinquent taxes levied on real property are returned to the county treasurer for collection under this section, the provisions of this act apply for collection of those taxes and, except for taxes levied on or before December 31, 2002, for the issuance of notes in anticipation of the collection of those taxes.

(4) A judgment entered under section 78k that extinguishes any lien for unpaid taxes or special assessments does not extinguish the right of the city to bring an in personam action under this act or its charter to enforce personal liability for those unpaid taxes or special assessments. The city may bring an in personam action to enforce personal liability for unpaid delinquent taxes levied prior to January 1, 2003 or special assessments not returned as delinquent under this section within 15 years after the taxes or special assessments are levied.

(5) If a city treasurer returns uncollected delinquent taxes levied on real property on or before December 31, 2002 to the county treasurer for collection under this section, the county treasurer shall remit to the city treasurer after each month the taxes and interest collected during that month.

**211.89b City with population of 600,000 or more; taxes levied after December 31, 2003.**

Sec. 89b. For taxes levied after December 31, 2003, notwithstanding the provisions of a charter of a county adopted pursuant to 1966 PA 293, MCL 45.501 to 45.521, or the provisions

of the charter of a home rule city, to the contrary, a city with a population of 600,000 or more shall do all of the following:

(a) Prepare and submit to each taxpayer a statement indicating the amount of tax levied on real and personal property by all taxing jurisdictions authorized to levy a general ad valorem property tax in that city.

(b) Collect the tax levied on real and personal property by all taxing jurisdictions authorized to levy a general ad valorem property tax in that city.

**211.89c Solid waste fee; treatment as delinquent; applicability of section; “solid waste fee” defined.**

Sec. 89c. (1) In any local tax collecting unit in a city with a population of 600,000 or more, the local tax collecting unit may treat as delinquent under sections 87b, 87c, and 87d a solid waste fee that is delinquent under the terms of any ordinance authorizing the solid waste fee, if that solid waste fee was included in the tax statement under section 44.

(2) If a solid waste fee is delinquent on the March 1 immediately preceding the date that the solid waste fee is returned as delinquent to the county treasurer under subsection (1), a county treasurer may include that solid waste fee in the county’s delinquent tax revolving fund.

(3) If a solid waste fee is returned to a county treasurer as delinquent under subsection (2), that solid waste fee shall be a fee treated as a delinquent tax for purposes of sections 87b, 87c, and 87d and the property on which the fee is assessed is subject to forfeiture, foreclosure, and sale for delinquent taxes as provided in this act if the local tax collecting unit has also returned to that county treasurer uncollected delinquent taxes levied on the property on which the solid waste fee is assessed.

(4) If an owner redeems property that is his or her principal residence that is returned to the county treasurer for delinquent taxes and a delinquent solid waste fee is assessed to that owner’s principal residence, the owner may redeem his or her principal residence without payment of the delinquent solid waste fee. As used in this subsection, principal residence means property exempt under section 7cc.

(5) This section applies to any fee that was delinquent on or after March 1, 2007 and that was included in the delinquent tax roll delivered to a county treasurer at the same time as delinquent taxes for a year in which the fee is assessed.

(6) As used in this section, “solid waste fee” means that term as defined in the ordinance or resolution of the local tax collecting unit authorizing the assessment of the solid waste fee and includes all interest, penalties, and fees imposed on that solid waste fee.

**211.89d Return of uncollected delinquent taxes levied on real property after December 31, 2008; return of uncollected delinquent taxes levied on real property prior to December 31, 2008; personal liability; right of city to bring in personam action; definitions.**

Sec. 89d. (1) Notwithstanding the provisions of the charter of a home rule city to the contrary, the city treasurer of an eligible city shall return to the county treasurer all uncollected delinquent taxes levied on real property after December 31, 2008 on the March 1 immediately following the year in which the taxes are levied.

(2) The city treasurer of an eligible city may return all uncollected delinquent taxes levied on real property prior to December 31, 2008 to the county treasurer for collection on March 1, 2010. A city treasurer shall provide written notice to the county treasurer of his or her intent to return uncollected delinquent taxes levied prior to December 31, 2008 under this subsection not later than February 1, 2010. If uncollected delinquent taxes levied prior to

December 31, 2008 are returned to the county treasurer for collection under this subsection, the county treasurer shall collect those taxes with taxes returned as delinquent in 2010.

(3) After the uncollected delinquent taxes levied on real property are returned to the county treasurer for collection under this section, the provisions of this act apply for collection of those taxes and for the issuance of notes in anticipation of the collection of those taxes.

(4) A judgment entered under section 78k that extinguishes any lien for unpaid taxes or special assessments does not extinguish the right of the city to bring an in personam action under this act or its charter to enforce personal liability for those unpaid taxes or special assessments. The city may bring an in personam action to enforce personal liability for unpaid delinquent taxes levied prior to January 1, 2009 or special assessments not returned as delinquent under this section within 15 years after the taxes or special assessments are levied.

(5) As used in this section:

(a) “Delinquent taxes” or “uncollected delinquent taxes” includes the following:

(i) Any taxes levied by and payable to the city treasurer in installments the balance of which remains unpaid on January 1 immediately following the year in which the taxes are levied, and includes all interest and penalties that accrue after July 31 of the year in which all taxes billed by the eligible city are levied if that interest and those penalties remain unpaid on the date the delinquent taxes are returned to the county treasurer.

(ii) Any liens for unpaid tax and assessment liability acquired by the eligible city after December 31, 1999 and prior to January 1, 2009 pursuant to provisions contained within the eligible city’s charter.

(b) “Eligible city” means a city with a population of more than 50,000 and less than 100,000 that is located in a county with a population of less than 350,000 as determined by the most recent federal decennial census.

**211.89e Return of uncollected delinquent taxes levied on personal property after December 31, 2008; return of uncollected delinquent taxes levied on personal property prior to December 31, 2008; collection of taxes; provisions; definitions.**

Sec. 89e. (1) Notwithstanding the provisions of the charter of a home rule city to the contrary, and with the agreement of the county treasurer, the city treasurer of an eligible city may return to the county treasurer all uncollected delinquent taxes levied on personal property after December 31, 2008 on the March 1 immediately following the year in which the taxes are levied.

(2) With the agreement of the county treasurer, the city treasurer of an eligible city may return all uncollected delinquent taxes levied on personal property prior to December 31, 2008 to the county treasurer for collection on March 1 of the year in which the county treasurer agrees to the return of uncollected delinquent taxes under this subsection. A city treasurer shall provide to the county treasurer written notice of his or her intent to return uncollected delinquent taxes levied prior to December 31, 2008 under this subsection not later than February 1 of the year in which the county treasurer agrees to the return of uncollected delinquent taxes under this subsection. If those uncollected delinquent taxes are returned to the county treasurer for collection under this subsection, the county treasurer shall collect those taxes with taxes returned as delinquent in that same year.

(3) After the uncollected delinquent taxes levied on personal property are returned to the county treasurer for collection under this section, the provisions of this act apply for collection of those taxes.



(4) As used in this section:

(a) “Delinquent taxes” or “uncollected delinquent taxes” includes any taxes levied by and payable to the city treasurer in installments the balance of which remains unpaid on January 1 immediately following the year in which the taxes are levied, and includes all interest and penalties that accrue after July 31 of the year in which all taxes billed by the city are levied if that interest and those penalties remain unpaid on the date the delinquent taxes are returned to the county treasurer.

(b) “Eligible city” means a city with a population of more than 50,000 and less than 100,000 that is located in a county with a population of less than 350,000.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 513]**

**(SB 1534)**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker’s compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to

create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act,” by amending section 2080 (MCL 500.2080), as amended by 1986 PA 318.

*The People of the State of Michigan enact:*

**500.2080 Life insurance, accident insurance, sick or funeral benefit company; prohibited conduct with regard to mortuary or undertaking establishments; funeral establishment, cemetery, or seller as limited life insurance producer; authorization to sell associated life insurance policies or annuity contracts; sale of cemetery goods or services or funeral goods or services; advising customers; application form; list; statement; sufficiency of death benefit; designation of certain beneficiaries prohibited; money payments required; medical, surgical, or hospital service; conditions and criteria regarding predeath assignment of proceeds of life insurance policy or annuity contract; false or misleading statements; false, misleading, deceptive, or unfair advertising; rules; protection against certain solicitations; signed statement authorizing release of assignment proceeds; failure to sign authorization statement; conditions to sale or solicitation of sale of life insurance policy or annuity contract with intention of having purchaser assign proceeds; action to enforce compliance; damages; violation as misdemeanor; separate offenses; penalties; creation, administration, and use of funeral consumers education and advocacy fund; definitions.**

Sec. 2080. (1) It is unlawful for any life or accident insurer authorized to do business in this state to own, manage, supervise, operate, or maintain a mortuary or undertaking establishment, or to permit its officers, agents, or employees to own or maintain any such funeral or undertaking establishment.

(2) Except as otherwise provided in subsection (6), it is unlawful for any life insurance, sick or funeral benefit company, or any company, corporation, or association engaged in a similar business to contract or agree with any funeral director, undertaker, or mortuary to the effect that the funeral director, undertaker, or mortuary conducts the funeral of any person insured by the company, corporation, or association.

(3) A funeral establishment, cemetery, or seller shall not be licensed as an insurance producer under chapter 12 other than as a limited licensee pursuant to this subsection and chapter 12. A funeral establishment, cemetery, or seller shall not be a limited life insurance producer unless that funeral establishment, cemetery, or seller provides a written assurance to the commissioner at the time of application for the limited licensure and with each license renewal that he or she has read and understands the conditions contained in subsection (9) and agrees to comply with those conditions. A person licensed as a limited life insurance producer under this subsection and chapter 12 is authorized and licensed to sell only an associated life insurance policy or annuity contract and is not authorized or licensed to sell any other type of insurance policy or annuity contract. A person licensed as a limited life insurance producer under this subsection and chapter 12 to sell associated life insurance policies or annuity contracts shall not sell cemetery goods or services or funeral goods or services unless all of the conditions provided in subsection (9) are met. A person licensed as a life insurance producer, other than a limited life insurance producer, shall not sell cemetery

goods or services or funeral goods or services or be associated with a funeral establishment, cemetery, or seller. Notwithstanding any other provision in this act, a funeral establishment, cemetery, or seller may advise customers or potential customers of the availability of life insurance, the proceeds of which may be assigned pursuant to subsection (6), and may provide application forms and other information in regard to that life insurance. If an application form is provided, the funeral establishment, cemetery, or seller shall also provide to the person a list annually prepared by the commissioner setting forth the life insurance companies offering in Michigan associated life insurance policies or annuity contracts. The list shall include the name, address, and telephone number of a producer for each of the life insurance companies listed. The list also shall include a statement that a person who is insured under any life insurance policy or annuity contract may assign all or a portion of the proceeds, not to exceed the amount provided in subsection (6)(g), of the existing life insurance policy or annuity contract for the payment of funeral services or goods or cemetery services or goods to any funeral establishment, cemetery, or seller that has accepted any other assignment of an associated life insurance policy or annuity contract during that calendar year. The funeral establishment, cemetery, or seller shall accept an assignment on the proceeds from any associated or nonassociated life insurance policy or annuity contract pursuant to subsection (6), and this requirement on the funeral establishment, cemetery, or seller shall be set forth in the statement prepared by the commissioner. The assignor or the person or persons legally entitled to make funeral arrangements for the person whose life was insured may contract with the funeral establishment, cemetery, or seller of his or her choice for the rendering of the funeral goods or services or cemetery goods or services. Except as otherwise provided in this subsection, each associated life insurance policy or annuity contract delivered or issued for delivery in this state shall have a death benefit that is sufficient to cover the initial contract price of the cemetery goods or services or funeral goods or services and that increases at an annual rate of not less than the consumer price index. However, a life insurer may provide an associated life insurance policy or annuity contract with a limited death benefit to an insured who does not meet insurance requirements for a policy that provides immediate full coverage or who chooses not to answer medical questions required for a policy that provides immediate full coverage. An associated life insurance policy or annuity contract with a limited death benefit shall disclose in boldfaced type that the death benefit will not be sufficient to cover the initial contract price for the cemetery goods and services or funeral goods and services for a period of up to 2 years if the premium is not paid in full and that during this period the price for those goods and services may increase at a rate higher than the increase in the consumer price index for this period.

(4) A person shall not be designated as the beneficiary in any policy of life or accident insurance whereby the beneficiary, directly or indirectly, shall, in return for all or a part of the proceeds of the policy of insurance, furnish cemetery services or goods or funeral services or goods in connection therewith.

(5) Except as otherwise provided in subsection (6), it shall be unlawful for any life or accident, or sick or funeral benefit company, or any person, company, corporation, or association, to offer or furnish goods or services or anything but money to its insureds or to his or her heirs, representatives, attorneys, relatives, associates, or assigns in any connection with, or by way of encumbrance, assignment, payment, settlement, satisfaction, discharge, or release of any insurance policy. However, this subsection does not prohibit any company, corporation, or association from furnishing medical, surgical, or hospital service.

(6) Notwithstanding any other provision in this act, a life insurer may write a life insurance policy or annuity contract that is subject to an assignment of the proceeds of the insurance policy or annuity contract as payment for cemetery services or goods or funeral services or goods as provided in this subsection regardless of the relationship between the life insurer and the assignee. An assignment of the proceeds of the insurance policy or annuity contract

pursuant to this subsection shall be in writing on a form approved by the commissioner. A predeath assignment of the proceeds of a life insurance policy or annuity contract as payment for cemetery services or goods or funeral services or goods is void unless all of the following conditions and criteria are met:

(a) The assignment is an inseparable part of the contract for the cemetery services or goods or funeral services or goods for which the assigned proceeds serve as payment.

(b) The assignment is revocable by the assignor, assignor's successor, or if the assignor is the insured by the representative of the insured's estate prior to the provision of the cemetery services or goods or funeral services or goods.

(c) The contract for funeral services or goods or cemetery services or goods and the assignment provide that upon revocation of the assignment, the contract for the cemetery services or goods or funeral services or goods is revoked and cemetery services or goods or funeral services or goods may be obtained from any cemetery, funeral establishment, or seller.

(d) The assignment contains the following disclosure in boldfaced type:

**“This assignment may be revoked by the assignor or assignor's successor or, if the assignor is also the insured and deceased, by the representative of the insured's estate before the rendering of the cemetery services or goods or funeral services or goods. If the assignment is revoked, the death benefit under the life insurance policy or annuity contract shall be paid in accordance with the beneficiary designation under the insurance policy or annuity contract.”**

(e) The assignment provides for all of the following:

(i) That the actual price of the cemetery services or goods or funeral services or goods delivered at the time of death may be more than or less than the price set forth in the assignment.

(ii) For the assignment of an associated life insurance policy or annuity contract, that any increase in the price of the cemetery services or goods or funeral services or goods does not exceed the ultimate death benefit under the life insurance policy or annuity contract. This requirement does not apply to an insurance policy or annuity contract with a limited death benefit during the period that the limited death benefit is in effect. During this period, neither the beneficiary nor the seller is obligated to fulfill the terms of the contract for the cemetery services or goods or funeral services or goods for which the assigned proceeds serve as payment and the assignment of the associated life insurance policy or annuity contract may be revoked.

(iii) For the assignment of a nonassociated life insurance policy or annuity contract, that any increase in the price of the cemetery services or goods or the funeral services or goods shall not exceed the consumer price index or the retail price list in effect when the death occurs, whichever is less.

(iv) That if the ultimate death benefit under a life insurance policy or annuity contract exceeds the price of the cemetery services or goods or funeral services or goods at the time of performance, the excess amount shall be distributed to the beneficiary designated under the life insurance policy or annuity contract or the insured's estate.

(v) That any addition to or modification of the contract for cemetery services or goods or funeral services or goods does not revoke the assignment or the contract for the cemetery services or goods or funeral services or goods that are not affected by the addition or modification for which the assigned proceeds are payment unless the assignment is revoked.

(f) The assignment is limited to that portion of the proceeds of the life insurance policy or annuity contract that is needed to pay for the cemetery services or goods or funeral services or goods for which the assignor has contracted.

(g) For an associated life insurance policy or annuity contract, the death benefit of the life insurance policy or annuity contract subject to the assignment does not exceed \$5,000.00 when the first premium payment is made on the life insurance policy or annuity contract. For a nonassociated life insurance policy or annuity contract, the initial amount of proceeds assigned does not exceed \$5,000.00. The maximum amounts in this subdivision shall be adjusted annually in accordance with the consumer price index.

(h) The assignment shall contain the dispute resolution rights in subsection (8). After the death of the insured but before the cemetery services or goods or funeral services or goods are provided, the funeral establishment, cemetery, or seller shall provide to a representative of the insured's estate a separate document entitled, "dispute resolution disclosure statement," which shall clearly set forth the dispute resolution rights in subsection (8). The dispute resolution disclosure statement shall be filed with the commissioner and shall be considered approved unless disapproved within 30 days after the submission. The language used to set forth the dispute resolution rights in subsection (8) shall be written in a manner calculated to be understood by a person of ordinary intelligence.

(i) The assignor and not the assignee is responsible for making the premium payments due on the life insurance policy or annuity contract. This subdivision does not apply to an insurance producer when acting as a fiduciary pursuant to section 1207.

(j) After the death of the insured but before the cemetery services or goods or funeral services or goods are provided, the representative of the insured's estate is provided with a current price list for the cemetery services or goods or funeral services or goods provided pursuant to the assignment.

(k) At the time the assignment is made, the assignee complies with the price disclosure rules of the federal trade commission prescribed in 16 CFR part 453 whether or not the rules by their own terms apply to the offering.

(l) At the time the assignment is made, the assignor certifies that the insured does not have in effect other life insurance policies or annuity contracts that have been assigned as payment for cemetery goods or services or funeral goods or services which together with the additional assignment would have an aggregate face value in excess of the limitation provided in subdivision (g).

(m) For the assignment of a nonassociated life insurance policy or annuity contract, the assignment complies with both of the following:

(i) The assignment is sufficient to cover the initial contract price of the cemetery goods or services or funeral goods or services.

(ii) The assignment provides that any increase in the price of the cemetery services or goods or the funeral services or goods shall not exceed the consumer price index or the retail price list in effect when the death occurs, whichever is less.

(7) An insurer or an insurance producer shall not make a false or misleading statement, oral or written, regarding an assignment subject to subsection (6) or regarding the rights or obligations of any party or prospective party to the assignment. An insurer or an insurance producer shall not advertise or promote an assignment subject to subsection (6) in a manner that is false, misleading, deceptive, or unfair. The commissioner shall promulgate rules regulating the solicitation of plans promoting assignments subject to subsection (6) to protect against solicitations that are intimidating, vexatious, fraudulent, or misleading, or which take unfair advantage of a person's ignorance or emotional vulnerability.

(8) After the cemetery services or goods or funeral services or goods are provided, the funeral establishment, cemetery, or seller shall provide to a representative of the insured's estate a statement to be signed by the representative of the insured's estate authorizing the release of the assignment proceeds for the payment of the cemetery services or goods or

funeral services or goods. The insurer shall release to the funeral establishment, cemetery, or seller the assignment proceeds upon receipt of the authorization statement signed by a representative of the insured's estate. If a representative of the insured's estate fails to sign the authorization statement, the following shall take place:

(a) The funeral establishment, cemetery, or seller shall provide the representative of the insured's estate with a dispute resolution notice, a copy of which is to be sent to the insurer and the commissioner that states all of the following:

(i) That the funeral establishment, cemetery, or seller has provided the cemetery services or goods or funeral services or goods.

(ii) That a representative of the insured's estate has refused to authorize the insurer to release the assignment proceeds for the payment of the cemetery services or goods or funeral services or goods.

(iii) That a representative of the insured's estate may seek arbitration to resolve the payment dispute.

(b) Upon the receipt of the dispute resolution notice described in subdivision (a), the insurer shall retain the assignment proceeds for 30 days. The insurer shall release the assignment proceeds to the funeral establishment, cemetery, or seller if after the expiration of the 30 days the insurer is not informed that arbitration proceedings have been commenced, or pursuant to the award of the arbitrator.

(c) The funeral establishment, cemetery, seller, or a representative of the insured's estate may commence arbitration proceedings to determine the disposition of the assignment proceeds. Arbitration shall be conducted pursuant to the rules and procedures of the American arbitration association. Expenses of the arbitration shall be shared equally by the insured's estate and the assignee unless otherwise ordered by the arbitrator.

(d) Nothing in this subsection limits the right of any party involved in the payment dispute to seek other recourse permitted by law.

(9) A life insurance producer shall not sell or solicit the sale of a life insurance policy or annuity contract with the intention of having the purchaser assign the proceeds of the policy or contract to a funeral establishment, cemetery, or seller with which the producer is associated unless all of the following conditions are met:

(a) The producer discloses in writing to the purchaser the nature of his or her association with the funeral establishment, cemetery, or seller and that both the funeral establishment, cemetery, or seller and the producer will or may profit from the transaction, if that is the case.

(b) A funeral establishment, cemetery, or seller that accepts assignments pursuant to subsection (6) shall also offer to sell or provide cemetery goods or services or funeral goods or funeral services pursuant to prepaid funeral contracts as provided in the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or pursuant to the trust provisions of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(c) If the contemplated assignment is to be made to pay the cost of cemetery goods or services or funeral goods or funeral services, the producer shall disclose in writing to the purchaser that the cemetery goods or services or funeral goods or services may also be purchased prior to death by making payment directly to a funeral establishment, cemetery, or seller who will hold funds in escrow for the benefit of the purchaser pursuant to the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or in trust pursuant to the provisions of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. The written disclosure shall also state that upon cancellation of the prepaid funeral contract, the purchaser is entitled to a refund of at least 90% of the principal and income earned.

(d) The sale of cemetery goods or services or funeral goods or services shall not be conditioned on the purchaser buying or agreeing to buy a life insurance policy or annuity contract or on the assignment of the proceeds of the policy or contract to that funeral establishment, cemetery, or seller.

(e) The sale of a life insurance policy or annuity contract shall not be conditioned on the purchaser buying or agreeing to buy cemetery goods or services or funeral goods or services from the funeral establishment, cemetery, or seller with which the producer is associated or on the assignment of the proceeds of the policy or contract to that funeral establishment, cemetery, or seller.

(f) A discount from the current price of cemetery goods or services or funeral goods or services shall not be offered as an inducement to purchase or assign a life insurance policy or annuity contract.

(g) The life insurance policy or annuity contract sold by the producer may be canceled by the purchaser within 10 days after the receipt of the policy or annuity contract, in which event a full refund of all premiums shall be paid to the purchaser.

(h) The producer shall disclose in writing to the purchaser that the funeral establishment, cemetery, or seller with which the producer is associated will accept assignments of life insurance policies or annuity contracts sold by any other licensed producer.

(10) The commissioner or any other person, in order to force compliance with subsection (6) or (7), may bring an action in a circuit court in any county in which the assignee or insurance producer or any other person has solicited or sold a life insurance policy or annuity contract that is assigned pursuant to subsection (6), whether or not that person has purchased the life insurance policy or annuity contract or is personally aggrieved by a violation of this section. The court may award damages and issue equitable orders in accordance with the Michigan court rules to restrain conduct in violation of this section.

(11) Any person violating any of the provisions of this section is guilty of a misdemeanor, and each violation shall be a separate offense and upon conviction shall be punished by a fine not exceeding \$1,000.00 or by imprisonment for not more than 6 months, or both such fine and imprisonment within the discretion of the courts.

(12) In addition to the penalty provided in subsection (11), if, after a hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner determines a person has violated this section, the commissioner may order the person to pay a civil fine of not more than \$10,000.00 for each violation and may also impose other sanctions provided pursuant to chapter 12. The money collected under this subsection shall be deposited in the funeral consumers education and advocacy fund. The funeral consumers education and advocacy fund is created within the office of financial and insurance regulation. The fund shall be administered by the commissioner. The money in the fund shall be used to do both of the following:

(a) To promote the education of consumers concerning the prearrangement and purchase of cemetery or funeral services or goods through the purchase and assignment of life insurance or annuity contracts.

(b) To provide legal assistance to persons who were injured as a result of a violation of this section.

(13) For purposes of this section, a life insurance producer is associated with a funeral establishment, cemetery, or seller if any of the following apply:

(a) The producer is a funeral establishment, cemetery, or seller.

(b) The producer owns an interest, directly or indirectly, in a corporation or other entity that holds an interest in a funeral establishment, cemetery, or seller.

(c) The producer is an officer, employee, or agent of a funeral establishment, cemetery, or seller.

(d) The producer is an officer, employee, or agent of a corporation or other entity that holds an interest, either directly or indirectly, in a funeral establishment, cemetery, or seller, or in a corporation or other entity that holds an interest, directly or indirectly, in a corporation or other entity that holds an interest in a funeral establishment, cemetery, or seller.

(14) As used in this section:

(a) “Associated life insurance policy or annuity contract” is a life insurance policy or annuity contract that is marketed, designed, and intended to be assigned as payment for cemetery goods or services or funeral goods or services.

(b) “Casket” means any box or container consisting of 1 or more parts in which a dead human body is placed prior to interment, entombment, or cremation which may or may not be permanently interred, entombed, or cremated with the dead human body. A permanent interment or entombment receptacle designed or intended for use without a cemetery burial vault or other outside container shall also be considered a casket.

(c) “Catafalque” means an ornamental or decorative object or structure placed beneath, over, or around a casket, vault, or a dead human body prior to final disposition of the dead human body.

(d) “Cemetery” means that term as defined in but not necessarily regulated under section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522, or an officer, agent, or employee thereof.

(e) “Cemetery burial vault or other outside container” means a box or container used solely at the place of interment to permanently surround or enclose a casket and to support the earth above the casket after burial.

(f) “Cemetery goods” means land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery. In addition, cemetery goods include cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment which are sold by a cemetery.

(g) “Cemetery services” means those services customarily performed by a cemetery.

(h) “Combination unit” means any product consisting of a unit or a series of units designed or intended to be used together as both a casket and as a permanent burial receptacle.

(i) “Consumer price index” means the annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period as reported by the United States department of labor and as certified by the commissioner.

(j) “Funeral establishment” means a funeral establishment or a person who is engaged in the practice of mortuary science as those terms are defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, or an officer, agent, or employee thereof.

(k) “Funeral goods” means items of merchandise which will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including, but not limited to, caskets, other burial containers, combination units, and catafalques. Funeral goods does not include cemetery goods.

(l) “Funeral services” means services customarily performed by a person who is licensed pursuant to sections 1801 to 1812 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812. Funeral services includes, but is not limited to, care of human remains, embalming, preparation of human remains for final disposition, professional services relating to a funeral or an alternative to a funeral or final disposition of human remains, transportation



of human remains, limousine services, use of facilities or equipment for viewing human remains, visitation, memorial services, or services used in connection with a funeral or alternative to a funeral, coordinating or conducting funeral rites or ceremonies, and other services provided in connection with a funeral, alternative to a funeral, or final disposition of human remains.

(m) “Limited death benefit” means the sum payable upon the insured’s death during not more than the first 2 years that an associated life insurance policy or annuity contract is in effect that is less than the amount necessary to cover the initial contract price of cemetery goods and services or funeral goods and services, but that provides for a minimum benefit as follows:

(i) During the first year of the contract, not less than 25% of the initial contract price of cemetery goods and services or funeral goods and services.

(ii) During the second year of the contract, not less than 50% of the initial contract price of cemetery goods and services or funeral goods and services.

(n) “Nonassociated life insurance policy or annuity contract” means a life insurance policy or annuity contract that is not marketed to be assigned, designed to be assigned, or intended to be assigned as payment for cemetery goods or services or funeral goods or services.

(o) “Representative of insured’s estate” means the person or persons legally entitled to make the funeral arrangements for the person whose life was insured.

(p) “Seller” means a person who offers to sell cemetery goods or services or funeral goods or services or any agent, officer, or employee thereof.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 514]**

**(SB 1642)**

AN ACT to amend 1992 PA 234, entitled “An act to establish a judges retirement system; to provide for the administration and maintenance of the retirement system; to create a retirement board; to prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; to establish certain funds; to prescribe the powers and duties of certain state departments and certain state and local officials and employees; to provide for certain disqualifications; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 105 and 604 (MCL 38.2105 and 38.2604), as amended by 2002 PA 95.

*The People of the State of Michigan enact:*

**38.2105 Definitions; E, F.**

Sec. 105. (1) Beginning January 1, 2002, except as otherwise provided in this subsection, “eligible retirement plan” means 1 or more of the following:

(a) An individual retirement account described in section 408(a) of the internal revenue code, 26 USC 408.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code, 26 USC 408.

(c) An annuity plan described in section 403(a) of the internal revenue code, 26 USC 403.

(d) A qualified trust described in section 401(a) of the internal revenue code, 26 USC 401.

(e) An annuity contract described in section 403(b) of the internal revenue code, 26 USC 403.

(f) An eligible plan under section 457(b) of the internal revenue code, 26 USC 457, that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and that separately accounts for amounts transferred into such eligible plan under section 457(b) of the internal revenue code, 26 USC 457, from this retirement system, that accepts the distributee's eligible rollover distribution.

(g) Beginning January 1, 2008, a Roth individual retirement account as described in section 408A of the internal revenue code, 26 USC 408A, subject to the rules that apply to rollovers from a traditional individual retirement account to a Roth individual retirement account.

(2) Beginning January 1, 2007, "eligible rollover distribution" means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

(a) A distribution made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary.

(b) A distribution for a specified period of 10 years or more.

(c) A distribution to the extent that the distribution is required under section 401(a)(9) of the internal revenue code, 26 USC 401.

(d) The portion of any distribution that is not includable in federal gross income, except to the extent such portion of the distribution is paid to either of the following:

(i) An individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, 26 USC 408.

(ii) A qualified plan described in section 401(a) of the internal revenue code, 26 USC 401, or an annuity contract described in section 403(b) of the internal revenue code, 26 USC 403, and the plan providers agree to separately account for the amounts paid, including any portion of the distribution that is includable in federal gross income, and the portion of the distribution which is not so includable.

(3) "Executive secretary" means the executive secretary of the retirement system as provided in section 205.

(4) Except as otherwise provided in this subsection, "final compensation" means the annual rate of compensation for the calendar year of retirement. For a member who retires on January 1, final compensation means the annual rate of compensation for the calendar year immediately preceding the date of retirement. Final compensation does not include an amount that exceeds the maximum salary set forth for that particular member or vested former member in the revised judicature act, if applicable. For a member who is a judge and who performs judicial duties for a limited period or a specific assignment as authorized by the supreme court pursuant to section 23 of article VI of the state constitution of 1963, final compensation means the annual rate of compensation the member was being paid at the termination of his or her tenure in office as an elected judge.

(5) "Former elected official" means a member who held a state elective office before membership in this retirement system, the former judges retirement system, or the former probate judges retirement system.

(6) "Former judges retirement system" means the state of Michigan judges' retirement system created by former 1951 PA 198.

(7) “Former probate judges retirement system” means the state of Michigan probate judges retirement system created by former 1954 PA 165.

**38.2604 Intent of act; employer-financed benefits; limitations; use of assets; returning post-tax member contributions; beginning date of distributions; minimum distribution requirements; termination of retirement system; election to rollover to retirement plan; interest rate; consideration of compensation; qualified military service.**

Sec. 604. (1) This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans and beginning January 1, 2010, applicable provisions of the final regulations issued by the internal revenue service on April 5, 2007. Employer-financed benefits provided by the retirement system under this act shall not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits, including benefits payable to retirants and retirement allowance beneficiaries, subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation shall apply to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires. The required minimum distribution requirements imposed by section 401(a)(9) of the internal revenue code, 26 USC 401, shall apply to this act and be administered in accordance with a reasonable and good faith interpretation of the required minimum distribution requirements for all years in which the required minimum distribution requirements apply to this act.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is non-forfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411, and related internal revenue service regulations applicable to governmental plans.

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner

prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 506(1)(a) and (b) and 602, the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(10) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code. This subsection applies to all qualified military service on or after December 12, 1994. Beginning on January 1, 2007, in accordance with section 401(a)(37) of the internal revenue code, 26 USC 401, if a member dies while performing qualified military service, for purposes of determining any death benefits payable under this act, the member shall be treated as having resumed and then terminated employment on account of death.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 515]**

**(SB 218)**

AN ACT to amend 1974 PA 198, entitled “An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties,” by amending section 9 (MCL 207.559), as amended by 2008 PA 170.

*The People of the State of Michigan enact:*

**207.559 Finding and determination in resolution approving application for certificate; valuation requiring separate finding and statement; compliance with certain requirements as condition to approval of application and granting of certificate; demolition, sale, or transfer of obsolete industrial property; certificate applicable to speculative building; procedural information; failure of commission to receive application; replacement facility; property owned or operated by casino; issuance of certificates.**

Sec. 9. (1) The legislative body of the local governmental unit, in its resolution approving an application, shall set forth a finding and determination that the granting of the industrial

facilities exemption certificate, considered together with the aggregate amount of industrial facilities exemption certificates previously granted and currently in force, shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of a taxing unit that levies an ad valorem property tax in the local governmental unit in which the facility is located or to be located. If the state equalized valuation of property proposed to be exempt pursuant to an application under consideration, considered together with the aggregate state equalized valuation of property exempt under certificates previously granted and currently in force, exceeds 5% of the state equalized valuation of the local governmental unit, the commission, with the approval of the state treasurer, shall make a separate finding and shall include a statement in the order approving the industrial facilities exemption certificate that exceeding that amount shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of an affected taxing unit.

(2) Except for an application for a speculative building, which is governed by subsection (4), the legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate unless the applicant complies with all of the following requirements:

(a) The commencement of the restoration, replacement, or construction of the facility occurred not earlier than 12 months before the filing of the application for the industrial facilities exemption certificate. If the application is not filed within the 12-month period, the application may be filed within the succeeding 12-month period and the industrial facilities exemption certificate shall in this case expire 1 year earlier than it would have expired if the application had been timely filed. This subdivision does not apply for applications filed with the local governmental unit after December 31, 1983.

(b) For applications made after December 31, 1983, the proposed facility shall be located within a plant rehabilitation district or industrial development district that was duly established in a local governmental unit eligible under this act to establish a district and that was established upon a request filed or by the local governmental unit's own initiative taken before the commencement of the restoration, replacement, or construction of the facility.

(c) For applications made after December 31, 1983, the commencement of the restoration, replacement, or construction of the facility occurred not earlier than 6 months before the filing of the application for the industrial facilities exemption certificate.

(d) The application relates to a construction, restoration, or replacement program that when completed constitutes a new or replacement facility within the meaning of this act and that shall be situated within a plant rehabilitation district or industrial development district duly established in a local governmental unit eligible under this act to establish the district.

(e) Completion of the facility is calculated to, and will at the time of issuance of the certificate have the reasonable likelihood to create employment, retain employment, prevent a loss of employment, or produce energy in the community in which the facility is situated.

(f) Completion of the facility does not constitute merely the addition of machinery and equipment for the purpose of increasing productive capacity but rather is primarily for the purpose and will primarily have the effect of restoration, replacement, or updating the technology of obsolete industrial property. An increase in productive capacity, even though significant, is not an impediment to the issuance of an industrial facilities exemption certificate if other criteria in this section and act are met. This subdivision does not apply to a new facility.

(g) The provisions of subdivision (c) do not apply to a new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in April of 1992 if the application was approved by the local governing body and was denied by the state tax commission in April of 1993.

(h) The provisions of subdivisions (b) and (c) and section 4(3) do not apply to 1 or more of the following:

(i) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1995 for construction that was commenced in July 1992 in a district that was established by the legislative body of the local governmental unit in July 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(ii) A facility located in an industrial development district that was established in January 1994 and was owned by a person who filed an application for an industrial facilities exemption certificate in February 1994 if the personal property and real property portions of the application were approved by the legislative body of the local governmental unit and the personal property portion of the application was approved by the state tax commission in December 1994 and the real property portion of the application was denied by the state tax commission in December 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(iii) A facility located in an industrial development district that was established in December 1995 and was owned by a person who filed an application for an industrial facilities exemptions certificate in November or December 1995 for construction that was commenced in September 1995.

(iv) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in July 2001 for construction that was commenced in February 2001 in a district that was established by the legislative body of the local governmental unit in September 2001. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16. The facility described in this subparagraph shall be taxed under this act as if it was granted an industrial facilities exemption certificate in October 2001, and a corrected tax bill shall be issued by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. If granting the industrial facilities exemption certificate under this subparagraph results in an overpayment of the tax, a rebate, including any interest and penalties paid, shall be made to the taxpayer by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll within 30 days of the date the exemption is granted. The rebate shall be without interest.

(v) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in December 2005 for construction that was commenced in September 2005 in a district that was established by the legislative body of the local governmental unit in December 2005. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16.

(vi) A facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for real property in July 2006 if the application was approved by the legislative body of the local governmental unit in September 2006 but not submitted to the state tax commission until September 2006.

(vii) A new facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for personal property in June 2006 if the application was approved by the legislative body of the local governmental unit in August 2006 but not submitted to the state tax commission until 2007. The effective date of the certificate shall be December 31, 2006.

(viii) A new facility located in an industrial development district that was established by the legislative body of the local governmental unit in September of 2007 for construction

that was commenced in March 2007 and for which an application for an industrial facilities exemption certificate was filed in September of 2007.

(ix) A facility located in an industrial development district that was established by the legislative body of the local governmental unit in August 2007 and was owned by a person who filed an application for an industrial facilities exemption certificate in June 2007 for equipment that was purchased in January 2007.

(x) A facility located in an industrial development district that otherwise meets the criteria of this act that has received written approval from the chairperson of the Michigan economic growth authority.

(i) The provisions of subdivision (c) do not apply to any of the following:

(i) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1993 if the application was approved by the legislative body of the local governmental unit and the real property portion of the application was denied by the state tax commission in December 1993.

(ii) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in September 1993 if the personal property portion of the application was approved by the legislative body of the local governmental unit and the real property portion of the application was denied by the legislative body of the local governmental unit in October 1993 and subsequently approved by the legislative body of the local governmental unit in September 1994.

(iii) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in August 1993 if the application was approved by the local governmental unit in September 1993 and the application was denied by the state tax commission in December 1993.

(iv) A facility located in an existing industrial development district occupied by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in October of 1995 for construction that was commenced in November or December of 1994.

(v) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in July of 1995 and the personal property portion of the application was approved by the state tax commission in November of 1995.

(j) If the facility is locating in a plant rehabilitation district or an industrial development district from another location in this state, the owner of the facility is not delinquent in any of the taxes described in section 10(1)(a) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690, or substantially delinquent in any of the taxes described in and as provided under section 10(1)(b) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690.

(3) If the replacement facility when completed will not be located on the same premises or contiguous premises as the obsolete industrial property, then the applicant shall make provision for the obsolete industrial property by demolition, sale, or transfer to another person with the effect that the obsolete industrial property shall within a reasonable time again be subject to assessment and taxation under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or be used in a manner consistent with the general purposes of this act, subject to approval of the commission.

(4) The legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate that applies

to a speculative building unless the speculative building is or is to be located in a plant rehabilitation district or industrial development district duly established by a local governmental unit eligible under this act to establish a district; the speculative building was constructed less than 9 years before the filing of the application for the industrial facilities exemption certificate; the speculative building has not been occupied since completion of construction; and the speculative building otherwise qualifies under subsection (2)(e) for an industrial facilities exemption certificate. An industrial facilities exemption certificate granted under this subsection shall expire as provided in section 16(3).

(5) Not later than September 1, 1989, the commission shall provide to all local assessing units the name, address, and telephone number of the person on the commission staff responsible for providing procedural information concerning this act. After October 1, 1989, a local unit of government shall notify each prospective applicant of this information in writing.

(6) Notwithstanding any other provision of this act, if on December 29, 1986 a local governmental unit passed a resolution approving an exemption certificate for 10 years for real and personal property but the commission did not receive the application until 1992 and the application was not made complete until 1995, then the commission shall issue, for that property, an industrial facilities exemption certificate that begins December 30, 1987 and ends December 30, 1997. The facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1987.

(7) Notwithstanding any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on July 8, 1991 but rescinded that resolution and passed a resolution approving an industrial facilities exemption certificate for that same facility as a replacement facility on October 21, 1996, the commission shall issue for that property an industrial facilities exemption certificate that begins December 30, 1991 and ends December 2003. The replacement facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1991.

(8) Property owned or operated by a casino is not industrial property or otherwise eligible for an abatement or reduction of ad valorem property taxes under this act. As used in this subsection, "casino" means a casino or a parking lot, hotel, motel, convention and trade center, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(9) Notwithstanding section 16a and any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on October 28, 1996 for a certificate that expired in December 2003 and the local governmental unit passes a resolution approving the extension of the certificate after December 2003 and before March 1, 2006, the commission shall issue for that property an industrial facilities exemption certificate that begins on December 30, 2005 and ends December 30, 2010 as long as the property continues to qualify under this act.

(10) Notwithstanding any other provision of this act, if the commission issued an industrial facilities exemption certificate for a new facility on December 8, 1998 but revoked that industrial facilities exemption certificate for that same facility effective December 30, 2006 and that new facility is purchased by a buyer on or before November 1, 2007, the commission shall issue for that property an industrial facilities exemption certificate that begins December 31, 1998 and ends December 30, 2010 and shall transfer that industrial facilities exemption certificate to the buyer. The new facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate effective on December 31, 1998.



(11) Notwithstanding any other provision of this act, if the commission issued industrial facilities exemption certificates for new facilities on October 30, 2002, September 9, 2003, and November 30, 2005 but revoked the industrial facilities exemption certificates for the same facilities effective December 30, 2007 and the new facilities continue to qualify under this act, the commission shall issue for the properties industrial facilities exemption certificates which end respectively on December 30, 2008, December 30, 2009, and December 30, 2011.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 516]**

**(SB 345)**

AN ACT to amend 1974 PA 198, entitled “An act to provide for the establishment of plant rehabilitation districts and industrial development districts in local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to impose and provide for the disposition of an administrative fee; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of the state tax commission and certain officers of local governmental units; and to provide penalties,” by amending section 9 (MCL 207.559), as amended by 2008 PA 170.

*The People of the State of Michigan enact:*

**207.559 Finding and determination in resolution approving application for certificate; valuation requiring separate finding and statement; compliance with certain requirements as condition to approval of application and granting of certificate; demolition, sale, or transfer of obsolete industrial property; certificate applicable to speculative building; procedural information; failure of commission to receive application; replacement facility; property owned or operated by casino; issuance of certificates.**

Sec. 9. (1) The legislative body of the local governmental unit, in its resolution approving an application, shall set forth a finding and determination that the granting of the industrial facilities exemption certificate, considered together with the aggregate amount of industrial facilities exemption certificates previously granted and currently in force, shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of a taxing unit that levies an ad valorem property tax in the local governmental unit in which the facility is located or to be located. If the state equalized valuation of property proposed to be exempt pursuant to an application under consideration, considered together with the aggregate state equalized valuation of property exempt under certificates previously granted and currently in force, exceeds 5% of the state equalized valuation of the local governmental unit, the commission, with the approval of the state treasurer, shall make a separate finding and shall include a statement in the order approving the industrial facilities exemption certificate that exceeding that amount shall not have the effect of substantially impeding the operation of the local governmental unit or impairing the financial soundness of an affected taxing unit.

(2) Except for an application for a speculative building, which is governed by subsection (4), the legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate unless the applicant complies with all of the following requirements:

(a) The commencement of the restoration, replacement, or construction of the facility occurred not earlier than 12 months before the filing of the application for the industrial facilities exemption certificate. If the application is not filed within the 12-month period, the application may be filed within the succeeding 12-month period and the industrial facilities exemption certificate shall in this case expire 1 year earlier than it would have expired if the application had been timely filed. This subdivision does not apply for applications filed with the local governmental unit after December 31, 1983.

(b) For applications made after December 31, 1983, the proposed facility shall be located within a plant rehabilitation district or industrial development district that was duly established in a local governmental unit eligible under this act to establish a district and that was established upon a request filed or by the local governmental unit's own initiative taken before the commencement of the restoration, replacement, or construction of the facility.

(c) For applications made after December 31, 1983, the commencement of the restoration, replacement, or construction of the facility occurred not earlier than 6 months before the filing of the application for the industrial facilities exemption certificate.

(d) The application relates to a construction, restoration, or replacement program that when completed constitutes a new or replacement facility within the meaning of this act and that shall be situated within a plant rehabilitation district or industrial development district duly established in a local governmental unit eligible under this act to establish the district.

(e) Completion of the facility is calculated to, and will at the time of issuance of the certificate have the reasonable likelihood to create employment, retain employment, prevent a loss of employment, or produce energy in the community in which the facility is situated.

(f) Completion of the facility does not constitute merely the addition of machinery and equipment for the purpose of increasing productive capacity but rather is primarily for the purpose and will primarily have the effect of restoration, replacement, or updating the technology of obsolete industrial property. An increase in productive capacity, even though significant, is not an impediment to the issuance of an industrial facilities exemption certificate if other criteria in this section and act are met. This subdivision does not apply to a new facility.

(g) The provisions of subdivision (c) do not apply to a new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in April of 1992 if the application was approved by the local governing body and was denied by the state tax commission in April of 1993.

(h) The provisions of subdivisions (b) and (c) and section 4(3) do not apply to 1 or more of the following:

(i) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1995 for construction that was commenced in July 1992 in a district that was established by the legislative body of the local governmental unit in July 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(ii) A facility located in an industrial development district that was established in January 1994 and was owned by a person who filed an application for an industrial facilities exemption certificate in February 1994 if the personal property and real property portions of the application were approved by the legislative body of the local governmental unit and

the personal property portion of the application was approved by the state tax commission in December 1994 and the real property portion of the application was denied by the state tax commission in December 1994. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16(3).

(iii) A facility located in an industrial development district that was established in December 1995 and was owned by a person who filed an application for an industrial facilities exemptions certificate in November or December 1995 for construction that was commenced in September 1995.

(iv) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in July 2001 for construction that was commenced in February 2001 in a district that was established by the legislative body of the local governmental unit in September 2001. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16. The facility described in this subparagraph shall be taxed under this act as if it was granted an industrial facilities exemption certificate in October 2001, and a corrected tax bill shall be issued by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. If granting the industrial facilities exemption certificate under this subparagraph results in an overpayment of the tax, a rebate, including any interest and penalties paid, shall be made to the taxpayer by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll within 30 days of the date the exemption is granted. The rebate shall be without interest.

(v) A facility located in an industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in December 2005 for construction that was commenced in September 2005 in a district that was established by the legislative body of the local governmental unit in December 2005. An industrial facilities exemption certificate described in this subparagraph shall expire as provided in section 16.

(vi) A facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for real property in July 2006 if the application was approved by the legislative body of the local governmental unit in September 2006 but not submitted to the state tax commission until September 2006.

(vii) A new facility located in an existing industrial development district owned by a person who filed or amended an application for an industrial facilities exemption certificate for personal property in June 2006 if the application was approved by the legislative body of the local governmental unit in August 2006 but not submitted to the state tax commission until 2007. The effective date of the certificate shall be December 31, 2006.

(viii) A new facility located in an industrial development district that was established by the legislative body of the local governmental unit in September of 2007 for construction that was commenced in March 2007 and for which an application for an industrial facilities exemption certificate was filed in September of 2007.

(ix) A facility located in an industrial development district that was established by the legislative body of the local governmental unit in August 2007 and was owned by a person who filed an application for an industrial facilities exemption certificate in June 2007 for equipment that was purchased in January 2007.

(x) A facility located in an industrial development district that otherwise meets the criteria of this act that has received written approval from the chairperson of the Michigan economic growth authority.

(xi) A new facility located in an industrial development district that was established by the legislative body of the local governmental unit in August of 2008 for construction that

was commenced in December 2005 and certificate of occupancy issued in September 2006 for which an application for an industrial facilities exemption certificate was filed in August of 2008.

(xii) A facility located in an industrial development district owned by a person who filed an application for a certificate for real and personal property in April 2005 if the application was approved by the legislative body of the local governmental unit in July 2005 for construction that was commenced in July 2004.

(xiii) A facility located in an industrial development district that was established by the legislative body of the local governmental unit in December 2007 for construction that was commenced in September 2007 and a certificate of occupancy issued in September 2008 for which an application for an industrial facilities exemption certificate was approved in May of 2008.

(i) The provisions of subdivision (c) do not apply to any of the following:

(i) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in October 1993 if the application was approved by the legislative body of the local governmental unit and the real property portion of the application was denied by the state tax commission in December 1993.

(ii) A new facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in September 1993 if the personal property portion of the application was approved by the legislative body of the local governmental unit and the real property portion of the application was denied by the legislative body of the local governmental unit in October 1993 and subsequently approved by the legislative body of the local governmental unit in September 1994.

(iii) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in August 1993 if the application was approved by the local governmental unit in September 1993 and the application was denied by the state tax commission in December 1993.

(iv) A facility located in an existing industrial development district occupied by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in October of 1995 for construction that was commenced in November or December of 1994.

(v) A facility located in an existing industrial development district owned by a person who filed an application for an industrial facilities exemption certificate in June of 1995 if the application was approved by the legislative body of the local governmental unit in July of 1995 and the personal property portion of the application was approved by the state tax commission in November of 1995.

(j) If the facility is locating in a plant rehabilitation district or an industrial development district from another location in this state, the owner of the facility is not delinquent in any of the taxes described in section 10(1)(a) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690, or substantially delinquent in any of the taxes described in and as provided under section 10(1)(b) of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2690.

(3) If the replacement facility when completed will not be located on the same premises or contiguous premises as the obsolete industrial property, then the applicant shall make provision for the obsolete industrial property by demolition, sale, or transfer to another person with the effect that the obsolete industrial property shall within a reasonable time again be subject to assessment and taxation under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or be used in a manner consistent with the general purposes of this act, subject to approval of the commission.

(4) The legislative body of the local governmental unit shall not approve an application and the commission shall not grant an industrial facilities exemption certificate that applies to a speculative building unless the speculative building is or is to be located in a plant rehabilitation district or industrial development district duly established by a local governmental unit eligible under this act to establish a district; the speculative building was constructed less than 9 years before the filing of the application for the industrial facilities exemption certificate; the speculative building has not been occupied since completion of construction; and the speculative building otherwise qualifies under subsection (2)(e) for an industrial facilities exemption certificate. An industrial facilities exemption certificate granted under this subsection shall expire as provided in section 16(3).

(5) Not later than September 1, 1989, the commission shall provide to all local assessing units the name, address, and telephone number of the person on the commission staff responsible for providing procedural information concerning this act. After October 1, 1989, a local unit of government shall notify each prospective applicant of this information in writing.

(6) Notwithstanding any other provision of this act, if on December 29, 1986 a local governmental unit passed a resolution approving an exemption certificate for 10 years for real and personal property but the commission did not receive the application until 1992 and the application was not made complete until 1995, then the commission shall issue, for that property, an industrial facilities exemption certificate that begins December 30, 1987 and ends December 30, 1997. The facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1987.

(7) Notwithstanding any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on July 8, 1991 but rescinded that resolution and passed a resolution approving an industrial facilities exemption certificate for that same facility as a replacement facility on October 21, 1996, the commission shall issue for that property an industrial facilities exemption certificate that begins December 30, 1991 and ends December 2003. The replacement facility described in this subsection shall be taxed under this act as if it was granted an industrial facilities exemption certificate on December 30, 1991.

(8) Property owned or operated by a casino is not industrial property or otherwise eligible for an abatement or reduction of ad valorem property taxes under this act. As used in this subsection, “casino” means a casino or a parking lot, hotel, motel, convention and trade center, or retail store owned or operated by a casino, an affiliate, or an affiliated company, regulated by this state pursuant to the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(9) Notwithstanding section 16a and any other provision of this act, if a local governmental unit passed a resolution approving an industrial facilities exemption certificate for a new facility on October 28, 1996 for a certificate that expired in December 2003 and the local governmental unit passes a resolution approving the extension of the certificate after December 2003 and before March 1, 2006, the commission shall issue for that property an industrial facilities exemption certificate that begins on December 30, 2005 and ends December 30, 2010 as long as the property continues to qualify under this act.

(10) Notwithstanding any other provision of this act, if the commission issued an industrial facilities exemption certificate for a new facility on December 8, 1998 but revoked that industrial facilities exemption certificate for that same facility effective December 30, 2006 and that new facility is purchased by a buyer on or before November 1, 2007, the commission shall issue for that property an industrial facilities exemption certificate that begins December 31, 1998 and ends December 30, 2010 and shall transfer that industrial facilities exemption certificate to the buyer. The new facility described in this subsection shall be

taxed under this act as if it was granted an industrial facilities exemption certificate effective on December 31, 1998.

(11) Notwithstanding any other provision of this act, if the commission issued industrial facilities exemption certificates for new facilities on October 30, 2002, September 9, 2003, and November 30, 2005 but revoked the industrial facilities exemption certificates for the same facilities effective December 30, 2007 and the new facilities continue to qualify under this act, the commission shall issue for the properties industrial facilities exemption certificates which end respectively on December 30, 2008, December 30, 2009, and December 30, 2011.

(12) Notwithstanding any other provision of this act, if in August 2008 a local governmental unit passed a resolution approving an exemption certificate for 12 years for real and personal property but the commission did not receive the application until 2008, then the commission shall issue, for that property, an industrial facilities exemption certificate that begins December 31, 2006 and ends December 30, 2018. The facility described in this subsection shall be taxed under this act as if it had been granted an industrial facilities exemption certificate on December 31, 2006.

This act is ordered to take immediate effect.  
Approved January 12, 2009.  
Filed with Secretary of State January 13, 2009.

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**[No. 517]**

**(SB 482)**

AN ACT to amend 2006 PA 479, entitled “An act to provide for the administration of the Michigan promise grant program; to provide for the powers and duties of certain state officers and entities; and to repeal acts and parts of acts,” by amending sections 2 and 4 (MCL 390.1622 and 390.1624), as amended by 2007 PA 42.

*The People of the State of Michigan enact:*

**390.1622 Definitions.**

Sec. 2. As used in this act:

(a) “Academic year” means the period from September 1 of a calendar year to August 31 of the next calendar year.

(b) “Approved postsecondary educational institution” means any of the following:

(i) A public or private college or university, junior college, or community college that grants degrees or certificates and is located in this state.

(ii) A postsecondary educational institution, other than an educational institution described in subparagraph (i), that is located in this state, grants degrees, certificates, or other recognized credentials, and is designated by the department as an approved postsecondary educational institution.

(iii) A service academy.

(c) “Clock hour” means a time period consisting of any of the following:

(i) Fifty to 60 minutes of class, lecture, or recitation in a 60-minute period.

(ii) Fifty to 60 minutes of faculty-supervised laboratory work, shop training, or internship in a 60-minute period.

(iii) Sixty minutes of preparation in a correspondence course.

(d) “Cumulative grade point average” means the weighted mean value of the courses considered by an approved postsecondary educational institution in determining whether to award a student an associate’s degree or a 2-year certificate of completion in a vocational training program, whether the student has completed a comparable vocational education program, or whether the student has completed 50% or more of the academic requirements for the award of a bachelor’s degree, including any courses completed at another approved postsecondary educational institution if the student transfers the credits for those courses to the approved postsecondary educational institution making that determination.

(e) “Department” means the department of treasury.

(f) “Fiscal year” means a fiscal year of this state. A fiscal year begins on October 1 of a calendar year and ends on September 30 of the next calendar year.

(g) “High school graduate” means an individual who has received a high school diploma from a high school or passed the general educational development (GED) diploma test or any other high school graduate equivalency examination approved by the state board of education.

(h) “Michigan promise grant” means a grant awarded by the department under this act.

(i) “Qualifying score” means a score in a reading, writing, mathematics, science, or social studies component of a state assessment test that has been determined by the superintendent of public instruction to indicate readiness to enroll in a course in that subject area in an approved postsecondary educational institution.

(j) “Service academy” means the United States military academy, United States naval academy, United States air force academy, United States coast guard academy, or United States merchant marine academy.

(k) “State assessment test” means any of the following:

(i) Subject to subparagraph (ii), the complete Michigan merit examination described in section 1279g of the revised school code, 1976 PA 451, MCL 380.1279g, and section 104b of the state school aid act of 1979, 1979 PA 94, MCL 388.1704b.

(ii) For a student who has previously taken the complete Michigan merit examination, the college examination component of the Michigan merit examination, as described in section 1279g(2)(a) of the revised school code, 1976 PA 451, MCL 380.1279g, and section 104b(2)(a) of the state school aid act of 1979, 1979 PA 94, MCL 388.1704b.

(iii) Any other test administered by the department of education to students in grades 11 and 12 to assure state compliance with the federal no child left behind act of 2001, Public Law 107-110.

(l) “Trust fund” means the Michigan merit award trust fund established in section 9 of the Michigan trust fund act, 2000 PA 489, MCL 12.259.

### **390.1624 Michigan promise grant program; establishment; eligibility requirements.**

Sec. 4. (1) The Michigan promise grant program is established. The department shall provide Michigan promise grants under this act from the trust fund and administer the Michigan promise grant program.

(2) Subject to subsection (3), each student who becomes a high school graduate in or after the 2006-2007 academic year is eligible for the award of a Michigan promise grant in an amount determined under section 5 or 6.

(3) In addition to the requirements set forth in subsection (2), the department must find that a student meets all of the following eligibility requirements to award the student a Michigan promise grant under this act:

(a) The department has received a completed application for payment as described in section 7(1), including the certification described in section 7(2) or (3), if applicable, on or before November 15 of the state fiscal year in which they are eligible to receive payment.

(b) The student is a high school graduate and a resident of this state.

(c) The student meets 1 of the following:

(i) For a grant under section 5, the student was awarded an associate's degree or a 2-year certificate of completion in a vocational training program at an approved postsecondary educational institution, completed a comparable vocational education program approved by the department at an approved postsecondary educational institution, or completed 50% or more of the academic requirements for the award of a bachelor's degree at an approved postsecondary educational institution within 4 years of his or her initial enrollment in an approved postsecondary educational institution and meets 1 of the following:

(A) Has a cumulative grade point average of at least 2.5.

(B) If the student completed a vocational education program that does not record grades or grade point averages for its students, has successfully completed that program.

(ii) For a grant under section 6, the student received a qualifying score in each of the reading, writing, mathematics, science, and social studies components of the state assessment test, and for each student who becomes a high school graduate in or after the 2010-2011 academic year, successfully completes at least 3 credits in mathematics and 3 credits in social science as described in section 1278a(1)(a) of the revised school code, 1976 PA 451, MCL 380.1278a, and 3 credits in science as described in section 1278b(1)(b) of the revised school code, 1976 PA 451, MCL 380.1278b.

(d) The student took the state assessment test.

(e) The student enrolled in an approved postsecondary educational institution within 2 years after he or she became a high school graduate. The department shall extend the 2-year period if the student becomes a member of the United States armed forces or peace corps during the 2-year period.

(f) The student did not previously receive a grant under this act or scholarship money under the Michigan merit award scholarship act, 1999 PA 94, MCL 390.1451 to 390.1459.

(g) The student meets any additional eligibility requirements established by the department.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 518]**

**(SB 651)**

AN ACT to amend 1965 PA 290, entitled "An act to regulate the use, construction, installation, and repair of certain boilers; to create a board of boiler rules; to prescribe uniform rules and regulations for certain boilers; to provide for the licensing of certain boiler inspectors, installers, and repairers and registration of certain boiler operators and stationary



engineers; to provide for powers and duties for certain state agencies and officers; to provide fees for registrations, licenses, permits, inspections, and certificates; to provide penalties and remedies for the violation of this act; and to repeal acts and parts of acts,” by amending section 13 (MCL 408.763), as amended by 1986 PA 277.

*The People of the State of Michigan enact:*

**408.763 Installation or repair of boiler; license required; person licensed under Forbes mechanical contractors act; examination; issuance; fee; renewal; exemption.**

Sec. 13. (1) Except as otherwise provided in this act, a person shall not engage in the business of installing boilers or repairing boilers, or both, unless the person has obtained a license under this act from the director.

(2) A person licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988, in the classification of hydronic heating and cooling and process piping may install, repair, alter, and remove a residential boiler installed in a residence exempt from this act under section 7 without obtaining a license under this act.

(3) The board may conduct an examination for a license to establish the competency of an applicant.

(4) A license shall be issued by the director upon recommendation of the board and upon payment of a fee prescribed pursuant to section 4a for each application.

(5) A license shall be renewed annually upon payment of a fee prescribed pursuant to section 4a.

(6) An individual in the employ of a licensee is not required to be licensed.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 519]**

**(HB 4872)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” (MCL 750.1 to 750.568) by adding section 135a.

*The People of the State of Michigan enact:*

**750.135a Leaving child unattended in vehicle; prohibition; violation; definitions.**

Sec. 135a. (1) A person who is responsible for the care or welfare of a child shall not leave that child unattended in a vehicle for a period of time that poses an unreasonable risk of harm or injury to the child or under circumstances that pose an unreasonable risk of harm or injury to the child.

(2) A person who violates this section is guilty of a crime as follows:

(a) Except as otherwise provided in subdivisions (b) to (d), the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(b) If the violation results in physical harm other than serious physical harm to the child, 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.

(c) If the violation results in serious physical harm to the child, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(d) If the violation results in the death of the child, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(3) As used in this section:

(a) “Child” means an individual less than 6 years of age.

(b) “Physical harm” and “serious physical harm” mean those terms as defined in section 136b.

(c) “Unattended” means alone or without the supervision of an individual 13 years of age or older who is not legally incapacitated.

(d) “Vehicle” means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

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**[No. 520]**

**(HB 4873)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers;

to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 16g of chapter XVII (MCL 777.16g), as amended by 2002 PA 630.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.16g MCL 750.135 to 750.147b; felonies to which chapter applicable.**

Sec. 16g. (1) This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.135	Person	D	Exposing children with intent to injure or abandon	10
750.135a(2)(c)	Person	D	Leaving child unattended in vehicle resulting in serious physical harm	10
750.135a(2)(d)	Person	B	Leaving child unattended in vehicle resulting in death	15
750.136b(2)	Person	B	Child abuse — first degree	15
750.136b(4)	Person	F	Child abuse — second degree	4
750.136b(5)	Person	G	Child abuse — third degree	2
750.136c	Person	B	Buying or selling an individual	20
750.145a	Person	F	Soliciting child to commit an immoral act	4
750.145b	Person	D	Accosting children for immoral purposes with prior conviction	10
750.145c(2)	Person	B	Child sexually abusive activity or materials — active involvement	20
750.145c(3)	Person	D	Child sexually abusive activity or materials — distributing, promoting, or financing	7
750.145c(4)	Person	F	Child sexually abusive activities or materials — possession	4
750.145d(2)(b)	Variable	G	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 1 year but less than 2 years	2
750.145d(2)(c)	Variable	F	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 2 years but less than 4 years	4

750.145d(2)(d)	Variable	D	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 4 years but less than 10 years	10
750.145d(2)(e)	Variable	C	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 10 years but less than 15 years	15
750.145d(2)(f)	Variable	B	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 15 years or for life	20
750.145n(1)	Person	C	Vulnerable adult abuse — first degree	15
750.145n(2)	Person	F	Vulnerable adult abuse — second degree	4
750.145n(3)	Person	G	Vulnerable adult abuse — third degree	2
750.145o	Person	E	Death of vulnerable adult caused by unlicensed caretaker	5
750.145p(1)	Person	G	Vulnerable adult — commingling funds, obstructing investigation, or filing false information	2
750.145p(2)	Person	G	Retaliation or discrimination by caregiver against vulnerable adult	2
750.145p(5)	Person	E	Vulnerable adult — caregiver violations — subsequent offense	5
750.147b	Person	G	Ethnic intimidation	2

(2) For a violation of section 145d of the Michigan penal code, 1931 PA 328, MCL 750.145d, determine the offense category, offense variable level, and prior record variable level based on the underlying offense.

### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4872 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

**[No. 521]****(SB 760)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 16g of chapter XVII (MCL 777.16g), as amended by 2002 PA 630.

*The People of the State of Michigan enact:*

## CHAPTER XVII

**777.16g MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d.**

Sec. 16g. (1) This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
750.135	Person	D	Exposing children with intent to injure or abandon	10
750.135a(2)(c)	Person	D	Leaving child unattended in vehicle resulting in serious physical harm	10
750.135a(2)(d)	Person	B	Leaving child unattended in vehicle resulting in death	15
750.136b(2)	Person	B	Child abuse — first degree	15
750.136b(4)	Person	F	Child abuse — second degree	4
750.136b(6)	Person	G	Child abuse — third degree	2
750.136c	Person	B	Buying or selling an individual	20
750.145a	Person	F	Soliciting child to commit an immoral act	4

750.145b	Person	D	Accosting children for immoral purposes with prior conviction	10
750.145c(2)	Person	B	Child sexually abusive activity or materials — active involvement	20
750.145c(3)	Person	D	Child sexually abusive activity or materials — distributing, promoting, or financing	7
750.145c(4)	Person	F	Child sexually abusive activities or materials — possession	4
750.145d(2)(b)	Variable	G	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 1 year but less than 2 years	2
750.145d(2)(c)	Variable	F	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 2 years but less than 4 years	4
750.145d(2)(d)	Variable	D	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 4 years but less than 10 years	10
750.145d(2)(e)	Variable	C	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 10 years but less than 15 years	15
750.145d(2)(f)	Variable	B	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 15 years or for life	20
750.145n(1)	Person	C	Vulnerable adult abuse — first degree	15
750.145n(2)	Person	F	Vulnerable adult abuse — second degree	4
750.145n(3)	Person	G	Vulnerable adult abuse — third degree	2
750.145o	Person	E	Death of vulnerable adult caused by unlicensed caretaker	5
750.145p(1)	Person	G	Vulnerable adult — commingling funds, obstructing investigation, or filing false information	2
750.145p(2)	Person	G	Retaliation or discrimination by caregiver against vulnerable adult	2

750.145p(5)	Person	E	Vulnerable adult — caregiver violations — subsequent offense	5
750.147b	Person	G	Ethnic intimidation	2

(2) For a violation of section 145d of the Michigan penal code, 1931 PA 328, MCL 750.145d, determine the offense category, offense variable level, and prior record variable level based on the underlying offense.

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 158.
- (b) House Bill No. 4872.

This act is ordered to take immediate effect.  
Approved January 12, 2009.  
Filed with Secretary of State January 13, 2009.

**Compiler's note:** Senate Bill No. 158, referred to in enacting section 2, was filed with the Secretary of State January 16, 2009, and became 2008 PA 577, Eff. Apr. 1, 2009.

House Bill No. 4872, also referred to in enacting section 2, was filed with the Secretary of State January 13, 2009, and became 2008 PA 519, Eff. Apr. 1, 2009.

**[No. 522]**

**(SB 816)**

AN ACT to amend 1986 PA 281, entitled “An act to encourage local development to prevent conditions of unemployment and promote economic growth; to provide for the establishment of local development finance authorities and to prescribe their powers and duties; to provide for the creation of a board to govern an authority and to prescribe its powers and duties; to provide for the creation and implementation of development plans; to authorize the acquisition and disposal of interests in real and personal property; to permit the issuance of bonds and other evidences of indebtedness by an authority; to prescribe powers and duties of certain public entities and state officers and agencies; to reimburse authorities for certain losses of tax increment revenues; and to authorize and permit the use of tax increment financing,” by amending section 19 (MCL 125.2169), as amended by 1993 PA 333.

*The People of the State of Michigan enact:*

**125.2169 Preparation and submission of budget; manner; approval; cost of handling and auditing funds.**

Sec. 19. (1) The director of the authority shall prepare and submit for the approval of the board a budget for the operation of the authority for the ensuing fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. Before the budget may be adopted by the board, it shall be approved by the governing body. Funds of the municipality shall not be included in the budget of the authority except those funds authorized in this act or by the governing body.

(2) The governing body may assess a reasonable pro rata share of the funds for the cost of handling and auditing the funds against the funds of the authority, other than those committed for designated purposes, which cost shall be paid annually by the board pursuant to an appropriate item in its budget.

This act is ordered to take immediate effect.  
Approved January 12, 2009.  
Filed with Secretary of State January 13, 2009.

**[No. 523]**

**(SB 921)**

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,” by amending sections 16345, 18301, 18303, 18305, 18307, and 18309 (MCL 333.16345, 333.18301, 333.18303, 333.18305, 333.18307, and 333.18309), section 16345 as added by 1993 PA 79, sections 18301, 18303, 18307, and 18309 as added by 1988 PA 473, and section 18305 as amended by 2006 PA 394, and by adding sections 18313 and 18315.

*The People of the State of Michigan enact:*

**333.16345 Occupational therapist or occupational therapist assistant; fees.**

Sec. 16345. Fees for an individual licensed or seeking licensure to engage in the practice of occupational therapy, or to engage in practice as an occupational therapy assistant, under part 183 are as follows:

- (a) Application processing fee ..... \$ 20.00
- (b) License fee, per year ..... 75.00.

**333.18301 Definitions; principles of construction.**

Sec. 18301. (1) As used in this part:

- (a) “Occupational therapy assistant” means an individual licensed under this article to engage in practice as an occupational therapy assistant.



(b) “Occupational therapist” means an individual licensed under this article to engage in the practice of occupational therapy.

(c) “Occupational therapy services” means those services provided to promote health and wellness, prevent disability, preserve functional capabilities, prevent barriers, and enable or improve performance in everyday activities, including, but not limited to, the following:

(i) Establishment, remediation, or restoration of a skill or ability that is impaired or not yet developed.

(ii) Compensation, modification, or adaptation of a person, activity, or environment.

(iii) Evaluation of factors that affect activities of daily living, instrumental activities of daily living, and other activities relating to education, work, play, leisure, and social participation. Those factors include, but are not limited to, body functions, body structure, habits, routines, role performance, behavior patterns, sensory motor skills, cognitive skills, communication and interaction skills, and cultural, physical, psychosocial, spiritual, developmental, environmental, and socioeconomic contexts and activities that affect performance.

(iv) Interventions and procedures, including, but not limited to, any of the following:

(A) Task analysis and therapeutic use of occupations, exercises, and activities.

(B) Training in self-care, self-management, home management, and community or work reintegration.

(C) Development remediation, or compensation of client factors such as body functions and body structure.

(D) Education and training.

(E) Care coordination, case management, transition, and consultative services.

(F) Modification of environments and adaptation processes such as the application of ergonomic and safety principles.

(G) Assessment, design, fabrication, application, fitting, and training in rehabilitative and assistive technology, adaptive devices, and low temperature orthotic devices, and training in the use of prosthetic devices. For the purposes of this sub-subparagraph, the design and fabrication of low temperature orthotic devices does not include permanent orthotics.

(H) Assessment, recommendation, and training in techniques to enhance safety, functional mobility, and community mobility such as wheelchair management and mobility.

(I) Management of feeding, eating, and swallowing.

(J) Application of physical agent modalities and use of a range of specific therapeutic procedures, including, but not limited to, techniques to enhance sensory-motor, perceptual, and cognitive processing, manual therapy techniques, and adjunctive and preparatory activities.

(K) Providing vision therapy services or low vision rehabilitation services, if those services are provided pursuant to a referral or prescription from, or under the supervision or comanagement of, a physician licensed under part 170 or 175 or an optometrist licensed under part 174.

(d) “Practice as an occupational therapy assistant” means the practice of occupational therapy under the supervision of an occupational therapist licensed under this article.

(e) “Practice of occupational therapy” means the therapeutic use of everyday life occupations and occupational therapy services to aid individuals or groups to participate in meaningful roles and situations in the home, school, workplace, community, and other settings, to promote health and wellness through research and practice, and to serve those individuals or groups who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. The

practice of occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect a person's health, well-being, and quality of life throughout his or her life span. The practice of occupational therapy does not include any of the following:

(i) The practice of medicine or osteopathic medicine and surgery or medical diagnosis or treatment.

(ii) The practice of physical therapy.

(iii) The practice of optometry.

(2) In addition to the definitions in this part, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 161 contains definitions applicable to this part.

### **333.18303 Promulgation of rules; restricted use of words or titles; practice of occupational therapy or occupation therapy assistant; license required; exceptions.**

Sec. 18303. (1) After the rules described in sections 18307 and 18309 are promulgated for licensure under this article, an individual shall not use the titles "occupational therapist", "o.t.", "occupational therapist licensed", "o.t.l.", "occupational therapist registered", "o.t.r.", "occupational therapist registered licensed", "o.t.r.l.", "certified occupational therapy assistant", "c.o.t.a.", "certified occupational therapy assistant licensed", "c.o.t.a.l.", "occupational therapy assistant", "o.t.a.", "occupational therapy assistant licensed", "o.t.a.l.", or similar words which indicate that he or she is licensed as an occupational therapist or occupational therapy assistant unless the individual is licensed under this article.

(2) After the rules described in sections 18307 and 18309 are promulgated for licensure under this part, an individual shall not engage in the practice of occupational therapy or the practice as an occupational therapy assistant unless licensed or otherwise authorized by this article.

(3) Subsection (2) does not prevent any of the following:

(a) Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a licensed occupational therapist or occupational therapy assistant.

(b) An individual licensed or registered under any other part or act from performing activities that are considered occupational therapy services if those activities are within the individual's scope of practice and if the individual does not use the titles protected under subsection (1).

(c) An orthotist or prosthetist from providing services consistent with his or her training in orthotics or prosthetics if he or she is certified by the American board for certification in orthotics, prosthetics and pedorthics and he or she does not represent or hold himself or herself out to be a licensed occupational therapist or occupational therapy assistant.

(d) A parks and recreation professional who is directly employed by a local unit of government or a therapeutic recreation specialist certified by the national council for therapeutic recreation certification from providing services if he or she does not represent or hold himself or herself out to be a licensed occupational therapist or occupational therapy assistant.

### **333.18305 Michigan board of occupational therapists; creation; membership; terms.**

Sec. 18305. (1) The Michigan board of occupational therapists is created in the department and shall consist of the following 9 voting members who shall meet the requirements

of part 161: 5 licensed occupational therapists and 4 public members, 1 of whom shall be a physician licensed under part 170 or 175.

(2) The terms of office of individual members of the board created under this section, except those appointed to fill vacancies, expire 4 years after the appointment on December 31 of the year in which the term expires.

### **333.18307 Licensure as occupational therapist; rules.**

Sec. 18307. The board, in consultation with the department, shall promulgate rules under section 16145 setting forth the minimum standards for licensure as an occupational therapist. For purposes of this section, the professional standards issued by the American occupational therapy association or any other recognized trade association may be adopted by the board. The board shall not promulgate rules under this section that diminish competition or exceed the minimum level of regulation necessary to protect the public.

### **333.18309 Licensure as occupational therapy assistant; rules.**

Sec. 18309. The board, in consultation with the department, shall promulgate rules under section 16145 setting forth the minimum standards for licensure as an occupational therapy assistant. For purposes of this section, the professional standards issued by the American occupational therapy association or any other recognized trade association may be adopted by the board. The board shall not promulgate rules under this section that diminish competition or exceed the minimum level of regulation necessary to protect the public.

### **333.18313 Continuing education or competence requirements; rules.**

Sec. 18313. (1) Beginning the license renewal cycle after the effective date of the rules promulgated under this part, an individual licensed under this article shall meet the continuing education or competence requirements of this section when renewing his or her license.

(2) In addition to the requirements of part 161, the board, in consultation with the department, may promulgate rules to require a licensee seeking renewal to furnish evidence that, during the licensing period immediately preceding the application for renewal, the licensee completed an appropriate number of hours of continuing education courses or continuing competence activities related to the practice of occupational therapy and designed to further educate and maintain competence.

### **333.18315 Third party reimbursement or mandated worker's compensation benefits not required.**

Sec. 18315. This part does not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed as an occupational therapist or an occupational therapist assistant under this article.

#### **Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 493 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

[No. 524]

(SB 493)

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 16342 and part 176.

*The People of the State of Michigan enact:*

**333.16342 Speech-language pathologist; fees.**

Sec. 16342. Fees for an individual licensed or seeking licensure as a speech-language pathologist under part 176 are as follows:

- (a) Application processing fee ..... \$ 20.00
- (b) License fee, per year ..... 75.00.

PART 176. SPEECH-LANGUAGE PATHOLOGY

**333.17601 Definitions; limitation on scope of practice.**

Sec. 17601. (1) As used in this part:

(a) “Practice of speech-language pathology”, subject to subsection (2), means the application of principles, methods, and procedures related to the development of disorders of human communication including the following:

(i) Identifying by history or nonmedical physical examination, assessing, treating with therapy, rehabilitating, and preventing disorders of speech, voice, and language.

(ii) Identifying by history or nonmedical physical examination, assessing, treating with therapy, rehabilitating, and preventing disorders of oral-pharyngeal function and disorders related to swallowing dysfunction.

(iii) Identifying by history or nonmedical physical examination, assessing, treating with therapy, rehabilitating, and preventing cognitive-communicative disorders.

(iv) Assessing, selecting, and developing augmentative and alternative communication systems and providing training in their use.

(v) Providing speech-language treatment or therapy and related counseling services to hearing impaired individuals and their families.

(vi) Enhancing speech-language proficiency and communication effectiveness.

(vii) Screening of hearing for the purpose of speech-language assessment provided that judgments and descriptive statements about results of that screening are limited to pass-fail determinations.

(b) “Speech-language pathologist” means an individual engaged in the practice of speech-language pathology.

(2) Practice of speech-language pathology does not include either of the following:

(a) The practice of medicine or osteopathic medicine and surgery or medical diagnosis, medical management with medication, surgical interventions, ordering medical testing, or medical treatment.

(b) The fitting and dispensing of hearing aids as provided by article 13 of the occupational code, 1980 PA 299, MCL 339.1301 to 339.1309.

(3) In addition to the definitions in this part, article 1 contains general definitions and principles of construction applicable to all articles in this act and part 161 contains definitions applicable to this part.

### **333.17603 Use of certain titles or words.**

Sec. 17603. Beginning the effective date of this part, an individual shall not use the titles “speech-language pathologist”, “speech pathologist”, “speech therapist”, “speech correctionist”, “speech clinician”, “language therapist”, “language pathologist”, “logopedist”, “communicologist”, “aphasiologist”, “phoniatrist”, “voice therapist”, and “voice pathologist”, or similar words that indicate that the individual is a speech-language pathologist, unless the individual is licensed under this part as a speech-language pathologist.

### **333.17605 Michigan board of speech-language pathology; creation; membership; qualifications; terms.**

Sec. 17605. (1) The Michigan board of speech-language pathology is created in the department and consists of the following 11 members who meet the requirements of part 161:

(a) Six individuals who meet the requirements of section 16135(2), at least 1 of whom represents each professional area described in section 17609.

(b) Three public members.

(c) Two physicians, 1 of whom is a board-certified otolaryngologist.

(2) The terms of office of individual members of the board created under this part, except those appointed to fill vacancies and as otherwise provided in this subsection, expire 4 years after appointment on December 31 of the year in which the term expires. However, for the members first appointed, 2 shall serve for 1 year, 3 shall serve for 2 years, 3 shall serve for 3 years, and 3 shall serve for 4 years.

### **333.17607 Speech-language pathology; license required; exceptions.**

Sec. 17607. (1) An individual shall not engage in the practice of speech-language pathology unless licensed under this part.

(2) A licensee shall not perform an act, task, or function within the practice of speech-language pathology unless he or she is trained to perform the act, task, or function and the performance of that act, task, or function is consistent with the rules promulgated under section 17610(3). A speech-language pathologist shall refer a patient to a person licensed in the practice of medicine or osteopathic medicine and surgery if signs or symptoms identified

during the practice of speech-language pathology cause the speech-language pathologist to suspect that the patient has an underlying medical condition.

(3) A licensee shall perform assessment, treatment or therapy, and procedures related to swallowing disorders and medically related communication disorders only on patients who have been referred to him or her by a person licensed in the practice of medicine or osteopathic medicine and surgery.

(4) Limited diagnostic testing, such as endoscopic videolaryngostroboscopy, shall only be performed by a licensee in collaboration with or under the supervision of a person licensed in the practice of medicine or osteopathic medicine and surgery.

(5) A licensee shall follow procedures in which collaboration among the licensee and a person licensed in the practice of medicine or osteopathic medicine and surgery and other licensed health care professionals is regarded to be in the best interests of the patient.

(6) Subsection (1) does not prevent any of the following:

(a) An individual licensed or registered under any other part or act from performing activities that are considered speech-language pathology services if those activities are within the individual's scope of practice and if the individual does not use the titles protected under section 17603.

(b) The practice of speech-language pathology that is an integral part of a program of study by students enrolled in an accredited speech-language pathology educational program approved by the board, provided that those individuals are identified as students and provide speech-language pathology services only while under the supervision of a licensed speech-language pathologist.

(c) Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a licensed speech-language pathologist.

### **333.17609 License; issuance requirements; eligibility of certified teacher endorsed in speech and language impairment or individual credentialed by American speech-language-hearing association; temporary license.**

Sec. 17609. (1) The department shall, upon submission of a completed application and payment of the appropriate application processing and license fee, issue a license under this part to the following:

(a) An individual who meets the requirements of subsection (2) or (3).

(b) An individual who possesses a master's or doctor of science or doctor of philosophy degree in speech-language pathology acceptable to the board, who has successfully completed an accredited speech-language pathology training program approved by the department and the board that has at least 9 months, or the equivalent, of full-time supervised postgraduate clinical experience in speech-language pathology, and who passes an examination acceptable to the board.

(2) A certified teacher who, on the day before the effective date of this part, was endorsed in the area of speech and language impairment for the sole purpose of providing services as a part of employment or contract with a school district, intermediate school district, nonpublic school, or state department that provides educational services is eligible for a license under this part. An individual who meets the requirements of this subsection shall first apply for a license on or before the expiration of 2 years after the effective date of this part. An individual who obtains a license under this subsection is eligible for renewal of that license under this part if he or she continues to meet the requirements of this subsection.

(3) An individual who, on the day before the effective date of this part, has the credential conferred by the American speech-language-hearing association as a certified speech-language

pathologist is eligible for a license under this part. An individual who meets the requirements of this subsection and who maintains the credential conferred by the American speech-language-hearing association or a successor credential conferred by its successor organization shall first apply for a license on or before the expiration of 2 years after the effective date of this part. An individual who obtains a license under this subsection is eligible for renewal of that license under this part if he or she continues to meet the requirements of this subsection.

(4) An individual may apply for a temporary license under this subsection for the purpose of completing a supervised postgraduate clinical experience. The department shall issue a temporary license under this subsection for a period not to exceed 12 months. An individual seeking a temporary license under this subsection shall obtain a temporary license before beginning the supervised postgraduate clinical experience. At the conclusion of the postgraduate clinical experience, the individual's supervisor shall sign and submit to the department a report that documents the individual's satisfactory completion of the supervised postgraduate clinical experience. To be eligible for a temporary license under this subsection, an applicant shall meet all of the following requirements:

(a) Possess a master's or doctor of science or doctor of philosophy degree in speech-language pathology acceptable to the board. An applicant shall have his or her academic transcripts provided directly to the department by the academic institution.

(b) Submit a plan for supervised postgraduate clinical experience on a form approved by the board and signed by a licensed professional who will provide supervision.

### **333.17610 Rules.**

Sec. 17610. (1) The department, in consultation with the board, may promulgate rules under section 16145 as necessary or appropriate to fulfill its functions under this article and to supplement the requirements for licensure under this part, including adopting updated standards of that organization or standards of any successor organization of the American speech-language-hearing association.

(2) Subject to section 16204, the department shall by rule prescribe continuous professional development as a condition for licensure renewal.

(3) The department, in consultation with the board, shall promulgate rules regarding the performance of speech-language pathology that includes, but is not limited to, the performance of procedures described in section 17601(1)(a)(ii). The rules shall recognize and incorporate the requirements described in section 17607(3) and (4) and the need for collaboration among a speech-language pathologist and a person licensed in the practice of medicine or osteopathic medicine and surgery and other licensed health care professionals.

### **333.17611 Applicant from another state.**

Sec. 17611. The department may issue a license by endorsement to an applicant from another state that has licensure requirements substantially equivalent to this part, as determined by the board.

### **333.17613 Third-party endorsement or mandated worker's compensation benefits.**

Sec. 17613. This part does not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed under this part.

This act is ordered to take immediate effect.

Approved January 12, 2009.

Filed with Secretary of State January 13, 2009.

**[No. 525]****(HB 6089)**

AN ACT to establish the foster care trust fund in the department of human services; to establish the state foster care board; to prescribe the powers and duties of the state foster care board; to provide for the distribution of the money from the fund; to prescribe the powers and duties of certain agencies and officials; and to provide for appropriations.

*The People of the State of Michigan enact:*

**722.1021 Short title.**

Sec. 1. This act shall be known and may be cited as the “foster care trust fund act”.

**722.1022 Definitions.**

Sec. 2. As used in this act:

- (a) “Board” means the state foster care trust fund board created in section 4.
- (b) “Children’s ombudsman office” means the children’s ombudsman office created in section 3 of the children’s ombudsman act, 1994 PA 204, MCL 722.923.
- (c) “Department” means the department of human services.
- (d) “Foster care programs” means public or private programs that provide 24-hour substitute care for a child who is placed out of his or her parental or legal guardian’s home and under the supervision of the department as a temporary or permanent ward of the court or public ward placed in a supervising agency’s care under chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and includes children who cannot remain at home because their families are unable to provide minimal care and supervision.
- (e) “Trust fund” or “fund” means the foster care trust fund created in section 3.
- (f) “Juvenile justice program” means a public or private program where a child is placed out of his or her parental or legal guardian’s home and under the supervision of the department as a temporary ward of the court under chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, or a temporary public ward under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.
- (g) “Local councils” means a public or private community collaborative that sets the agenda for local collaborative activities for children in, or aging out of, foster care programs and juvenile justice programs, that works within the community to focus resources on common needs and outcomes of children in foster care, and that acts as the common community voice with state agencies on issues of strengthening responses to these youths’ needs.
- (h) “Public ward” means either of the following:
  - (i) That term as defined under section 2 of the youth rehabilitation services act, 1974 PA 150, MCL 803.302.
  - (ii) A youth whose parents’ parental rights have been terminated and who is legally free for adoption.

**722.1023 Foster care trust fund; creation; interest and earnings; investment; availability of money for disbursement; expenditures; limitation; money remaining at close of year.**

Sec. 3. (1) The foster care trust fund is created in the state treasury as a charitable and educational endowment fund. Money in the fund shall be expended only as provided in this section. The board shall be the administrator of the trust fund for auditing purposes and all powers, purposes, and duties of the fund shall be exercised by the board.



(2) The state treasurer shall credit to the trust fund all amounts appropriated for this purpose under section 435 of the income tax act of 1967, 1967 PA 281, MCL 206.435, any amounts received under section 9 of this act, and interest and earnings accrued from the saving and investment of that money.

(3) The state treasurer shall direct the investment of the trust fund.

(4) Not more than 1/2 of the balance of the money contributed to the trust fund each year, plus the interest and earnings, excluding unrealized gains and losses, credited to the trust fund during the previous fiscal year shall be available for disbursement upon the authorization of the board as provided in section 10.

(5) Money in the trust fund shall be available for disbursement upon appropriation.

(6) No money shall be expended from the fund until the date that the deposits credited into the trust from all sources as provided under this section equal or exceed \$800,000.00.

(7) No appropriations shall be made from the fund until the date that the deposits credited into the fund from all sources equal or exceed \$800,000.00.

(8) All expenses authorized under this act or necessary to implement this act shall only be funded by the trust fund created in this section.

(9) Money in the trust fund at the close of the year shall remain in the trust fund and shall not lapse to the general fund.

#### **722.1024 State foster care trust fund board; creation; powers and duties; executive director; staff.**

Sec. 4. (1) The state foster care trust fund board is created within the department. The board shall exercise its powers and duties independently of the department except that budget, procurement, and related management functions shall be performed by the director of the department.

(2) The board shall appoint the executive director of the board. The executive director shall be a member of the state classified civil service. The executive director shall hire all staff required to exercise the powers and carry out the duties of the board. The board shall approve the number of staff members hired and their job descriptions.

#### **722.1025 Board; membership; terms; vacancy; chairperson; officers and committees; expenses.**

Sec. 5. (1) The board shall consist of 13 voting members as follows:

(a) The director of the department, the director of community health, the children's ombudsman, or designees authorized to speak on their behalf.

(b) Ten public members appointed by the governor with the advice and consent of the senate. As a group, the public members shall do all of the following:

(i) Demonstrate knowledge in the area of foster care.

(ii) Be representative of the demographic composition of this state.

(iii) To the extent practicable, be representative of all of the following categories: birth and foster parents, former foster care children, the business community, the religious community, the legal community, higher education providers, professional providers of foster care services, and volunteers in foster care services.

(2) The term of each public member shall be 3 years, except that of the public members first appointed, 3 shall serve for 3 years, 3 for 2 years, and 4 for 1 year. A public member shall not serve more than 2 consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The governor shall designate a chairperson of the board from among the public members. The chairperson shall serve in that position at the pleasure of the governor. The board may elect other officers and committees as it considers appropriate.

(4) Members of the board shall serve without compensation. Members of the board may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the civil service commission and department of management and budget.

### **722.1026 Conduct of business at public meeting; availability of writings to the public.**

Sec. 6. (1) The business that the board performs shall be conducted at a public meeting of the state board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A writing prepared, owned, used, in the possession of, or retained by the state board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

### **722.1027 Public input; board as collaborative body; duties; contracts with public or private agencies.**

Sec. 7. (1) The board shall seek input from the general public and all of the following individuals or groups that have an interest in or provide services to the foster care industry:

- (a) The Michigan federation for children and families or its successor organization.
- (b) The Michigan network for youth and families or its successor organization.
- (c) Statewide foster parent associations or their successor organizations.
- (d) The presidents council of the state universities of Michigan or its successor organization.
- (e) The Michigan community college association or its successor organization.
- (f) Michigan's children or its successor organization.
- (g) Michigan league for human services or its successor organization.
- (h) The superintendent of public instruction.
- (i) The director of the department of energy, labor, and economic growth.
- (j) The director of the department of corrections.
- (k) A representative of Michigan court appointed special advocates.
- (l) The association of accredited child and family agencies or its successor organization.
- (m) A representative of the children's trust fund.
- (n) The state supreme court.
- (o) The state foster care review board.
- (p) The Michigan association of counties or its successor organization.

(2) The board shall serve as a collaborative body that works with existing public and private foster care programs and provides financial assistance and resources to do all of the following:

- (a) Work to identify and address the many issues facing foster care children in this state.
- (b) Work with the foster care community to solve the problems facing current foster care children and those children who have been in the foster care system or who will soon age out of the foster care system.