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 repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 2468 and 2662 (MCL 500.2468 and 500.2662).

The People of the State of Michigan enact:

500.2468 Examination of rating organizations; report.

Sec. 2468. (1) The commissioner may make or cause to be made an examination of each rating organization licensed in this state under section 2436, each advisory organization referred to in section 2462, and of each group, association, or other organization referred to in section 2464. The reasonable costs of the examination shall be paid by the rating organization, advisory organization, or group, association, or other organization examined upon presentation to it of a detailed account of those costs. The officer, manager, agents, and employees of the rating organization, advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The examination is subject to the procedure provided for in section 222 relating to examinations of insurance companies.

(2) Instead of an examination under subsection (1), the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

500.2662 Examination of rating advisory organizations; report.

Sec. 2662. (1) The commissioner may make or cause to be made an examination of each rating organization licensed in this state under section 2630, each advisory organization referred to in section 2654, and of each group, association, or other organization referred to in section 2658. The reasonable costs of the examination shall be paid by the rating organization, advisory organization, or group, association, or other organization examined upon presentation to it of a detailed account of those costs. The officers, managers, agents, and employees of the rating organization, advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The examination is subject to the procedure provided for in section 222 relating to examinations of insurance companies.

(2) Instead of an examination under subsection (1), the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

This act is ordered to take immediate effect.
Approved March 7, 2002.
Filed with Secretary of State March 7, 2002.

[No. 38]

(SB 605)

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 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 repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 3114 (MCL 500.3114), as amended by 1984 PA 372.

The People of the State of Michigan enact:

500.3114 Persons entitled to personal protection insurance benefits or personal injury benefits; recoupment barred; order of priority for claim of motor vehicle occupant or motorcycle operator or passenger; 2 or more insurers in same order of priority; partial recoupment.

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to

or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(e) A taxicab insured as prescribed in section 3101 or 3102.

(f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

(3) An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

(6) If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits under subsection (5), an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among all of the insurers.

This act is ordered to take immediate effect.
Approved March 7, 2002.
Filed with Secretary of State March 7, 2002.

[No. 39]

(HB 5139)

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, and intermediate school districts; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," (MCL 380.1 to 380.1852) by adding section 1139.

The People of the State of Michigan enact:

380.1139 Access to high school pupil directory by armed forces recruiting representatives.

Sec. 1139. (1) Except as otherwise provided in subsection (2), the school officials of a public high school shall provide at least the same access to the high school campus and to pupil directory information of the pupils enrolled in the high school as is provided to other entities offering educational or employment opportunities to official recruiting representatives of all of the following for the purpose of informing pupils of educational and career opportunities available in the following:

(a) The armed forces of the United States.

(b) The service academies of the armed forces of the United States.

(2) If a high school pupil or the parent or legal guardian of a high school pupil submits a signed, written request to school officials of a public high school that indicates that the pupil or the parent or legal guardian does not want the pupil's directory information to be accessible to official recruiting representatives under subsection (1), then the school officials of the high school shall not allow that access to the pupil's directory information. The governing board of the school district, intermediate school district, or public school academy operating the high school shall ensure that pupils and parents and guardians are notified of the provisions of this subsection.

(3) The school officials of a public high school shall provide any public notice required to be given under section 444 of subpart 4 of part C of the general education provisions act, title IV of Public Law 90-247, 20 U.S.C. 1232g, commonly referred to as the family educational rights and privacy act of 1974, in order to comply with this section and federal law.

(4) The school officials of a public high school may require an official recruiting representative described in subsection (1) to pay a fee, not to exceed the actual costs incurred by the high school, for copying and mailing pupil directory information under this section.

(5) An official recruiting representative who receives pupil directory information under this section shall use that information only to provide information to pupils

concerning educational and career opportunities available in the armed forces of the United States or the service academies of the armed forces of the United States. An official recruiting representative who receives pupil directory information under this section shall not release that information to a person who is not involved in recruiting pupils for the armed forces of the United States or the service academies of the armed forces of the United States.

(6) Public schools are encouraged to assign 1 or more school employees to notify male pupils age 18 or older that they are required to register for the selective service.

(7) The armed forces of the United States are encouraged to work with each other to develop and use a standardized form for requesting access to a high school campus and for requesting a time for the access.

(8) As used in this section:

(a) "Armed forces of the United States" means the armed forces of the United States and their reserve components and the United States coast guard.

(b) "Pupil directory information" means a pupil's name and address and, if it is a listed or published telephone number, the pupil's telephone number.

This act is ordered to take immediate effect.
Approved March 11, 2002.
Filed with Secretary of State March 12, 2002.

[No. 40]

(HB 4690)

AN ACT to enter into the interstate compact for the supervision of adult offenders; and for related purposes.

The People of the State of Michigan enact:

3.1011 Short title.

Sec. 1. This act shall be known and may be cited as the "interstate compact for adult offender supervision".

3.1012 Interstate compact for supervision of adult offenders; form.

Sec. 2. The interstate compact for the supervision of adult offenders is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as follows:

ARTICLE I

PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that

congress, by enacting the crime control act, 4 U.S.C. section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states, to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states. In addition, this compact will create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches, and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity. The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(*l*) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article III of this compact.

ARTICLE III

THE COMPACT COMMISSION

The compacting states hereby create the "interstate commission for adult offender supervision". The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

Each compacting state represented at any meeting of the interstate commission is entitled to 1 vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of

rule-making and/or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission; and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV

THE STATE COUNCIL

Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least 1 representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(a) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

(b) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission.

(d) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices.

(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including, but not limited to, an executive committee as required by article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

(i) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of same.

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

(*l*) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) To establish a budget and make expenditures and levy duties as provided in article X of this compact.

(n) To sue and be sued.

(o) To provide for dispute resolution among compacting states.

(p) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(q) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

(r) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

(s) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

The interstate commission shall, by a majority of the members, within 12 months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) Establishing the fiscal year of the interstate commission.

(b) Establishing an executive committee and such other committees as may be necessary.

(c) Providing reasonable standards and procedures:

(*i*) For the establishment of committees.

(*ii*) Governing any general or specific delegation of any authority or function of the interstate commission.

(d) Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting.

(e) Establishing the titles and responsibilities of the officers of the interstate commission.

(f) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil

service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission.

(g) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations.

(h) Providing transition rules for "start-up" administration of the compact.

(i) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

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

Section C. Corporate Records of the Interstate Commission

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

Section D. Qualified Immunity, Defense, and Indemnification

The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person. The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against

such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

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

Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "government in sunshine act", 5 U.S.C. section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by 2/3 vote that an open meeting would be likely to:

(a) Relate solely to the interstate commission's internal personnel practices and procedures.

(b) Disclose matters specifically exempted from disclosure by statute.

(c) Disclose trade secrets or commercial or financial information which is privileged or confidential.

(d) Involve accusing any person of a crime or formally censuring any person.

(e) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(f) Disclose investigatory records compiled for law enforcement purposes.

(g) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity.

(h) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity.

(i) Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII

RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

Rule-making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule-making shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C.S. section 551 et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

If a majority of the legislatures of the compacting states reject a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

When promulgating a rule, the interstate commission shall:

(a) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule.

(b) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available.

(c) Provide an opportunity for an informal hearing.

(d) Promulgate a final rule and its effective date, if appropriate, based on the rule-making period.

Not later than 60 days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence (as defined in the APA), in the rule-making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within 12 months after the first meeting must, at a minimum, include:

(a) Notice to victims and opportunity to be heard.

(b) Offender registration and compliance.

(c) Violations/returns.

(d) Transfer procedures and forms.

(e) Eligibility for transfer.

(f) Collection of restitution and fees from offenders.

(g) Data collection and reporting.

(h) The level of supervision to be provided by the receiving state.

(i) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

(j) Mediation, arbitration, and dispute resolution.

The existing rules governing the operation of the previous compact superseded by this act shall be null and void 12 months after the first meeting of the interstate commission created hereunder.

Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement

The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII, section B, of this compact.

ARTICLE X

FINANCE

The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

Any state, as defined in article II of this compact, is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter, it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding

upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

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

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extends beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default

If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(a) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission.

(b) Remedial training and technical assistance as directed by the interstate commission.

(c) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within 60 days of

the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

Section D. Dissolution of Compact

The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to 1 compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

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

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

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

This act is ordered to take immediate effect.
Approved March 11, 2002.
Filed with Secretary of State March 12, 2002.

[No. 41]

(HB 5337)

AN ACT to amend 1949 PA 300, entitled "An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," by amending section 722 (MCL 257.722), as amended by 2000 PA 6.

The People of the State of Michigan enact:

257.722 Maximum axle load; normal loading maximum; designating highways as adequate for heavier loading; restrictions as to tandem axle assemblies; exceptions; normal size of tires; maximum wheel load; reduction of maximum axle load on concrete pavements during March, April, and May; exemptions; suspension of restrictions; determination of gross vehicle weight and axle weights; designation of highways for operation of certain vehicles; definition.

Sec. 722. (1) The maximum axle load shall not exceed the number of pounds designated in the following provisions that prescribe the distance between axles:

(a) If the axle spacing is 9 feet or more between axles, the maximum axle load shall not exceed 18,000 pounds for vehicles equipped with high pressure pneumatic or balloon tires.

(b) If the axle spacing is less than 9 feet between 2 axles but more than 3-1/2 feet, the maximum axle load shall not exceed 13,000 pounds for high pressure pneumatic or balloon tires.

(c) If the axles are spaced less than 3-1/2 feet apart, the maximum axle load shall not exceed 9,000 pounds per axle.

(d) Subdivisions (a), (b), and (c) shall be known as the normal loading maximum.

(2) When normal loading is in effect, the state transportation department, or a local authority with respect to highways under its jurisdiction, may designate certain highways, or sections of those highways, where bridges and road surfaces are adequate for heavier loading, and revise a designation as needed, on which the maximum tandem axle assembly loading shall not exceed 16,000 pounds for any axle of the assembly, if there is no other axle within 9 feet of any axle of the assembly.

(3) On a legal combination of vehicles, only 1 tandem axle assembly shall be permitted on the designated highways at the gross permissible weight of 16,000 pounds per axle, if there is no other axle within 9 feet of any axle of the assembly, and if no other tandem axle assembly in the combination of vehicles exceeds a gross weight of 13,000 pounds per axle. On a combination of truck tractor and semitrailer having not more than 5 axles, 2 consecutive tandem axle assemblies shall be permitted on the designated highways at a gross permissible weight of 16,000 pounds per axle, if there is no other axle within 9 feet of any axle of the assembly.

(4) Notwithstanding subsection (3), on a combination of truck tractor and semitrailer having not more than 5 axles, 2 consecutive sets of tandem axles may carry a gross permissible weight of not to exceed 17,000 pounds on any axle of the tandem axles if there is no other axle within 9 feet of any axle of the tandem axles and if the first and last axles of the consecutive sets of tandem axles are not less than 36 feet apart and the gross vehicle weight does not exceed 80,000 pounds to pick up and deliver agricultural commodities between the national truck network or special designated highways and any other highway. This subsection is not subject to the maximum axle loads of subsections (1), (2), and (3). For purposes of this subsection, a "tandem axle" means 2 axles spaced more than 40 inches but not more than 96 inches apart or 2 axles spaced more than 3-1/2 feet but less than 9 feet apart. This subsection does not apply during that period when reduced maximum loads are in effect pursuant to subsection (7). This subsection does not apply after December 31, 2006.

(5) The exception to the loading maximums and gross vehicle weight requirements of subsection (11) under subsection (7) for a person hauling agricultural commodities or a public utility vehicle applies only if the person who picks up or delivers the agricultural commodity either from a farm or to a farm or the public utility notifies the county road commission for roads under its authority not less than 48 hours before the pickup or delivery of the time and location of the pickup or delivery. The county road commission shall issue a permit to the person or the public utility and charge a fee that does not exceed the administrative costs incurred. The permit shall contain the following:

(a) The designated route or routes of travel for the load.

(b) The date and time period requested by the person who picks up or delivers the agricultural commodities or the public utility during which the load may be delivered or picked up.

(c) A maximum speed limit of travel, if necessary.

(d) Any other specific conditions agreed to between the parties.

(6) The normal size of tires shall be the rated size as published by the manufacturers, and the maximum wheel load permissible for any wheel shall not exceed 700 pounds per inch of width of tire.

(7) Except as provided in this subsection and subsection (8), during the months of March, April, and May in each year, the maximum axle load allowable on concrete pavements or pavements with a concrete base shall be reduced by 25% from the maximum axle load as specified in this chapter, and the maximum axle loads allowable on all other types of roads during these months shall be reduced by 35% from the maximum axle loads as specified. The maximum wheel load shall not exceed 525 pounds per inch of tire width on concrete and concrete base or 450 pounds per inch of tire width on all other roads during the period the seasonal road restrictions are in effect. This subsection does not apply to vehicles transporting agricultural commodities or public utility vehicles on a highway, road, or street under the jurisdiction of a local road agency.

(8) The state transportation department for roads under its jurisdiction and a county road commission for roads under its jurisdiction may grant exemptions from seasonal weight restrictions for milk on specified routes when requested in writing. Approval or denial of a request for an exemption shall be given by written notice to the applicant within 30 days after the date of submission of the application. If a request is denied, the written notice shall state the reason for denial and alternate routes for which the permit may be issued. The applicant shall have the right to appeal to the state transportation commission or the county road commission. These exemptions shall not apply on county roads in counties that have negotiated agreements with milk haulers or haulers of other commodities during periods of seasonal load limits before April 14, 1993. This subsection does not limit the ability of these counties to continue to negotiate such agreements.

(9) The state transportation department, or a local authority with respect to highways under its jurisdiction, may in its discretion suspend the restrictions imposed by this section when and where conditions of the highways or the public health, safety, and welfare warrant suspension, and impose the restricted loading requirements of this section on designated highways at any other time that the conditions of the highway require.

(10) For the purpose of enforcement of this act, the gross vehicle weight of a single vehicle and load or a combination of vehicles and loads, shall be determined by weighing individual axles or groups of axles, and the total weight on all the axles shall be the gross vehicle weight. In addition, the gross axle weight shall be determined by weighing individual axles or by weighing a group of axles and dividing the gross weight of the group of axles by the number of axles in the group. Pursuant to subsection (11), the overall gross weight on a group of 2 or more axles shall be determined by weighing individual axles or several axles, and the total weight of all the axles in the group shall be the overall gross weight of the group.

(11) The loading maximum in this subsection applies to interstate highways, and the state transportation department, or a local authority with respect to highways under its jurisdiction, may designate a highway, or a section of a highway, for the operation of vehicles having a gross vehicle weight of not more than 80,000 pounds that are subject to the following load maximums:

(a) Twenty thousand pounds on any 1 axle, including all enforcement tolerances.

(b) A tandem axle weight of 34,000 pounds, including all enforcement tolerances.

(c) An overall gross weight on a group of 2 or more consecutive axles equaling:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W = overall gross weight on a group of 2 or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of a group of 2 or more consecutive axles, and N = number of axles in the group under consideration; except that 2 consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the first and last axles of the consecutive sets of tandem axles are not less than 36 feet apart. The gross vehicle weight shall not exceed 80,000 pounds including all enforcement tolerances. Except for 5 axle truck tractor, semitrailer combinations having 2 consecutive sets of tandem axles, vehicles having a gross weight in excess of 80,000 pounds or in excess of the vehicle gross weight determined by application of the formula in this subsection shall be subject to the maximum axle loads of subsections (1), (2), and (3). As used in this subsection, "tandem axle weight" means the total weight transmitted to the road by 2 or more consecutive axles, the centers of which may be included between parallel transverse vertical planes spaced more than 40 inches but not more than 96 inches apart, extending across the full width of the vehicle. Except as otherwise provided in this section, vehicles transporting agricultural commodities shall have weight load maximums as defined in this subsection.

(12) As used in this section, "agricultural commodities" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, mushrooms, fertilizer, livestock bedding, farming equipment, and fuel for agricultural use. The term "agricultural commodities" shall not include trees and lumber.

This act is ordered to take immediate effect.
Approved March 11, 2002.
Filed with Secretary of State March 12, 2002.

[No. 42]

(HB 4987)

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 2512 (MCL 339.2512), as amended by 2000 PA 436.

The People of the State of Michigan enact:

339.2512 Prohibited conduct; penalties.

Sec. 2512. A licensee who commits 1 or more of the following is subject to the penalties set forth in article 6:

(a) Except in a case involving property management, acts for more than 1 party in a transaction without the knowledge of the parties.

(b) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in section 2517.

(c) Represents or attempts to represent a real estate broker other than the employer without the express knowledge and consent of the employer.

(d) Fails to account for or to remit money coming into the licensee's possession which belongs to others.

(e) Changes a business location without notification to the department.

(f) In the case of a real estate broker, fails to return a real estate salesperson's license within 5 days as provided in section 2507.

(g) In the case of a licensee engaged in property management, violates section 2512c(2), (5), or (6).

(h) Except as provided in section 2512b, shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.

(i) Conducts or develops a market analysis not in compliance with section 2601(a)(*ii*).

(j) Except in the case of property management accounts, fails to deposit in the real estate broker's custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:

(*i*) A real estate broker shall retain a deposit or other money made payable to a person, partnership, corporation, or association holding a real estate broker's license under this article pending consummation or termination of the transaction involved and shall account for the full amount of the money at the time of the consummation or termination of the transaction.

(*ii*) A real estate salesperson shall pay over to the real estate broker, upon receipt, a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.

(*iii*) A real estate broker shall not permit an advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with funds on deposit belonging to the real estate broker.

(*iv*) A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money belonging to others made payable to the real estate broker into a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.

(*v*) A real estate broker shall keep records of funds deposited in its custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A real estate broker's separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall

provide for withdrawal of funds without previous notice. This article and the rules promulgated pursuant to this article do not prohibit the deposit of money accepted under this section in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.

(*vi*) If a purchase agreement signed by a seller and purchaser provides that a deposit be held by an escrowee other than a real estate broker, a licensee in possession of such a deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee has received notice that an offer to purchase is accepted by all parties.

This act is ordered to take immediate effect.
Approved March 12, 2002.
Filed with Secretary of State March 12, 2002.

[No. 43]

(SB 180)

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 therefor; 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," by amending section 451 (MCL 750.451).

The People of the State of Michigan enact:

750.451 Prior convictions; penalty; establishment; definition.

Sec. 451. (1) A person who violates section 448, 449, 449a, or 450 shall be punished by imprisonment for not more than 90 days or by a fine of not more than $100.00, or both. A person who violates section 448, 449, 449a, or 450 and has a prior conviction is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $500.00, or both. A person who violates section 448, 449, 449a, or 450 and has 2 or more prior convictions is guilty of a felony punishable by imprisonment for not more than 2 years.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) An admission by the defendant.

(3) As used in this section, "prior conviction" means a violation of section 448, 449, 449a, or 450 or a local ordinance substantially corresponding to section 448, 449, 449a, or 450.

Effective date.

Enacting section 1. This amendatory act takes effect June 1, 2001.

This act is ordered to take immediate effect.
Approved March 13, 2002.
Filed with Secretary of State March 14, 2002.

[No. 44]

(HB 4325)

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 therefor; 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," by amending section 451 (MCL 750.451).

The People of the State of Michigan enact:

750.451 Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition.

Sec. 451. (1) Except as otherwise provided in this section, a person convicted of violating section 448, 449, 449a, 450, or 462 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.

(2) A person 16 years of age or older who is convicted of violating section 448, 449, 449a, 450, or 462 and who has 1 prior conviction 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.

(3) A person convicted of violating section 448, 449, 449a, 450, or 462 and who has 2 or more prior convictions is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not more than $2,000.00, or both.

(4) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(5) As used in this section, "prior conviction" means a violation of section 448, 449, 449a, 450, or 462 or a violation of a law of another state or of a political subdivision of this state or another state substantially corresponding to section 448, 449, 449a, 450, or 462.

Effective date.

Enacting section 1. This amendatory act takes effect June 1, 2002.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 180.

(b) Senate Bill No. 1029.

(c) House Bill No. 5449.

This act is ordered to take immediate effect.
Approved March 13, 2002.
Filed with Secretary of State March 14, 2002.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
Senate Bill No. 180 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 43, Imd. Eff. Mar. 14, 2002.
Senate Bill No. 1029 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 46, Eff. June 1, 2002.
House Bill No. 5449 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 45, Eff. June 1, 2002.

[No. 45]

(HB 5449)

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 therefor; 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," by amending sections 145a, 145b, and 448 (MCL 750.145a, 750.145b, and 750.448).

The People of the State of Michigan enact:

750.145a Accosting, enticing or soliciting child for immoral purpose.

Sec. 145a. A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $4,000.00, or both.

750.145b Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty.

Sec. 145b. (1) A person convicted of violating section 145a who has 1 or more prior convictions is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both.

(2) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before

sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(3) As used in this section, "prior conviction" means a violation of section 145a or a violation of a law of another state substantially corresponding to section 145a.

750.448 Soliciting, accosting, or inviting to commit prostitution or immoral act; crime.

Sec. 448. A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime punishable as provided in section 451.

Effective date.

Enacting section 1. This amendatory act takes effect June 1, 2002.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 180.

(b) Senate Bill No. 1029.

(c) House Bill No. 4325.

This act is ordered to take immediate effect.
Approved March 13, 2002.
Filed with Secretary of State March 14, 2002.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
Senate Bill No. 180 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 43, Imd. Eff. Mar. 14, 2002.
Senate Bill No. 1029 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 46, Eff. June 1, 2002.
House Bill No. 4325 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 44, Eff. June 1, 2002.

[No. 46]

(SB 1029)

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 therefor; 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," by amending sections 449, 450, and 462 (MCL 750.449, 750.450, and 750.462).

The People of the State of Michigan enact:

750.449 Admitting to place for purpose of prostitution; crime.

Sec. 449. A person 16 years of age or older who receives or admits or offers to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or who knowingly permits a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, is guilty of a crime punishable as provided in section 451.

750.450 Aiders and abettors; crime.

Sec. 450. A person 16 years of age or older who aids, assists, or abets another person to commit or offer to commit an act prohibited under section 448 or 449 is guilty of a crime punishable as provided in section 451.

750.462 Female 16 years of age or less in house of prostitution; crime.

Sec. 462. A person who, for a purpose other than prostitution, takes or conveys to, or employs, receives, detains, or allows a person 16 years of age or less to remain in, a house of prostitution, house of ill-fame, bawdy-house, house of assignation, or any house or place for the resort of prostitutes or other disorderly persons is guilty of a crime punishable as provided in section 451.

Effective date.

Enacting section 1. This amendatory act takes effect June 1, 2002.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 180.

(b) House Bill No. 4325.

(c) House Bill No. 5449.

This act is ordered to take immediate effect.
Approved March 13, 2002.
Filed with Secretary of State March 14, 2002.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
Senate Bill No. 180 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 43, Imd. Eff. Mar. 14, 2002.
House Bill No. 4325 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 44, Eff. June 1, 2002.
House Bill No. 5449 was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 45, Eff. June 1, 2002.

[No. 47]

(HB 5033)

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 2000 PA 279.

The People of the State of Michigan enact:

CHAPTER XVII

777.16g §§ 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
750.136b(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
750.145d(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 June 1, 2002.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5449 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 13, 2002.
Filed with Secretary of State March 14, 2002.

Compiler's note: House Bill No. 5449, referred to in enacting section 2, was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 45, Eff. June 1, 2002.

[No. 48]

(SB 880)

AN ACT to create a telecommunication rights-of-way oversight authority; to provide for fees; to prescribe the powers and duties of municipalities and certain state agencies and officials; to provide for penalties; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

484.3101 Short title; purpose of act.

Sec. 1. (1) This act shall be known and may be cited as the "metropolitan extension telecommunications rights-of-way oversight act".

(2) The purpose of this act is to do all of the following:

(a) Encourage competition in the availability, prices, terms, and other conditions of providing telecommunication services.

(b) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state.

(c) Improve the opportunities for economic development and the delivery of telecommunication services.

(d) Streamline the process for authorizing access to and use of public rights-of-way by telecommunication providers.

(e) Ensure the reasonable control and management of public rights-of-way by municipalities within this state.

(f) Provide for a common public rights-of-way maintenance fee applicable to telecommunication providers.

(g) Ensure effective review and disposition of disputes under this act.

(h) Allow for a tax credit as the sole means by which providers can recover the costs under this act and to insure that the providers do not pass these costs on to the end-users of this state through rates and charges for telecommunication services.

(i) Promote the public health, safety, welfare, convenience, and prosperity of this state.

(j) Create an authority to coordinate public right-of-way matters with municipalities.

484.3102 Definitions.

Sec. 2. As used in this act:

(a) "Authority" means the metropolitan extension telecommunications rights-of-way oversight authority created in section 3.

(b) "Broadband internet access transport services" means the broadband transmission of data between an end-user and the end-user's internet service provider's point of interconnection at a speed of 200 or more kilobits per second to the end-user's premises.

(c) "Commission" means the Michigan public service commission in the department of consumer and industry services.

(d) "Exchange" means that term as defined under section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(e) "Incumbent local exchange carrier" means that term as defined under section 251(h) of title II of the communications act of 1934, chapter 652, 110 Stat. 61, 47 U.S.C. 251.

(f) "Metropolitan area" means 1 or more municipalities located, in whole or in part, within a county having a population of 10,000 or more or a municipality that enacts an ordinance or resolution electing to be classified as part of a metropolitan area under this act.

(g) "Municipality" means a township, city, or village.

(h) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(i) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, alley, easement, or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

(j) "Telecommunication facilities" or "facilities" means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, and service provided by any wireless, 2-way communications device.

(k) "Telecommunication provider", "provider", and "telecommunication services" mean those terms as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, or service provided by any wireless, 2-way communication device. For the purposes of this act only, a provider also includes all of the following:

(*i*) A cable television operator that provides a telecommunication service.

(*ii*) Except as otherwise provided by this act, a person who owns telecommunication facilities located within a public right-of-way.

(*iii*) A person providing broadband internet transport access service.

484.3103 Metropolitan extension telecommunications rights-of-way oversight authority; establishment within department of consumer and industry services; director of authority; appointment; duties; power of authority to assess fees; annual report; rules.

Sec. 3. (1) Pursuant to section 27 of article VII of the state constitution of 1963 and any other applicable law, the metropolitan extension telecommunications rights-of-way oversight authority is established as an autonomous agency within the department of consumer and industry services. The director of the authority shall be appointed by the governor for a 4-year term. The director of the authority shall report directly to the governor. The department of consumer and industry services shall provide the authority all budget, procurement, and management-related functions. The department of consumer and industry services shall also provide suitable offices, facilities, equipment, staff, and supplies for the authority in the city of Lansing.

(2) The director of the authority is responsible for carrying out the powers and duties of the authority under this act.

(3) The authority shall coordinate public right-of-way matters with municipalities, assess the fees required under this act, and have the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider.

(4) The authority shall file an annual report of its activities for the preceding year with the governor and the members of the legislative committees dealing with energy, technology, and telecommunications issues on or before March 1 of each year.

(5) The authority may promulgate rules for the implementation and administration of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

484.3104 Enactment of local laws; limitation; existing rights.

Sec. 4. (1) Except as otherwise provided by this act, after the effective date of this act, a municipality in a metropolitan area shall not enact, maintain, or enforce an ordinance, local law, or other legal requirement applicable to telecommunication providers that is inconsistent with this act or that assesses fees or requires other consideration for access to or use of the public rights-of-way that are in addition to the fees required under this act.

(2) This act shall not affect any existing rights that a provider or municipality may have under a permit issued by a municipality or contract between the municipality and the provider related to the use of the public rights-of-way.

(3) Obtaining a permit or paying the fees required under this act does not give a provider a right to use conduit or utility poles.

484.3105 Use of public rights-of-way; providers subject to permit and fee requirements; facilities located in public right-of-way at effective date of act; permit application.

Sec. 5. (1) A provider using or seeking to use public rights-of-way in a metropolitan area for its telecommunication facilities shall obtain a permit under section 15 from the municipality and pay all fees required under this act. Authorizations or permits previously obtained from a municipality under section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, satisfy the permit requirement of this section.

(2) A provider asserting rights under 1883 PA 129, MCL 484.1 to 484.10, is subject to the permit and fee requirements of this act.

(3) Within 180 days from the effective date of this act, a provider with facilities located in a public right-of-way as of the effective date of this act that has not previously obtained authorization or a permit under section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit an application for a permit to each municipality in which the provider has facilities located in a public right-of-way. A provider submitting an application under this subsection is not required to pay the administrative fee required under section 6(4).

(4) The authority may, for good cause, allow a provider up to an additional 180 days to submit the application required under subsection (3).

484.3106 Applications and permits issued after effective date of act; form and process; disagreement on terms; appointment of mediator; determination by commissioner; extension; request for emergency relief; filing permit application with municipality; route maps; maintenance of website by commission.

Sec. 6. (1) For applications and permits issued after the effective date of this act, the commission shall prescribe the form and application process to be used in applying to a

municipality for a permit under section 15 and the provisions of a permit issued under section 15. The initial application forms and, unless otherwise agreed to by the parties, permit provisions shall be those approved by the commission as of August 16, 2001.

(2) If the parties cannot agree on the requirement of additional information requested by the municipality or the use of additional or different permit terms, either the municipality or the provider shall notify the commission, which shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. The commission may order that the permit be temporarily granted pending resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of a resolution of the dispute. Except as provided in subsection (3), the determination by the commission under this subsection shall be issued within 60 days from the date of the request to the commission. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day requirement under this subsection.

(3) A request for emergency relief under section 18(1) shall have the same time requirements and procedures as under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(4) Except as otherwise provided by this act, a provider shall file an application for a permit and pay a 1-time $500.00 application fee to each municipality whose boundaries include public rights-of-way for which access or use is sought by the provider.

(5) An application for a permit under this section shall include route maps showing the location of the provider's existing and proposed facilities in the format as required by the authority under subsection (8). Except as otherwise provided by a mandatory protective order issued by the commission, information included in the route maps of a provider's existing and proposed facilities that is a trade secret, proprietary, or confidential information is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) A municipality shall notify the commission when it grants or denies a permit, including information regarding the date on which the application was filed and the date on which the permit was granted or denied. The commission shall maintain on its website a listing showing the length of time required by each municipality to grant an application during the immediately preceding 3 years.

(7) Within 90 days after the substantial completion of construction of new facilities in a municipality, a provider shall submit route maps showing the location of the telecommunication facilities to both the commission and the affected municipalities.

(8) The commission shall, after input from providers and municipalities, require that the route maps required under this section be in a paper or electronic format as the commission may prescribe.

484.3107 Inability of provider and municipality to agree; appointment of mediator by commission; determination by commission; issuance; extension.

Sec. 7. If a provider and 1 or more municipalities are unable to agree on arrangements for coordinating and minimizing the disruption of public rights-of-way, ensuring the efficient construction of facilities, restoring the public rights-of-way after construction or other activities by a provider, protecting the public health, safety, and welfare, and resolving disputes arising under this act, the commission shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date

of the appointment for a resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of a resolution of the dispute. The determination by the commission under this section shall be issued within 60 days from the date of the request to the commission. The commission shall issue its determination within 15 days from the date of the request if a municipality demonstrates that the public health, safety, and welfare require a determination before the expiration of the 60 days. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day requirement under this section.

484.3108 Maintenance fee.

Sec. 8. (1) Except as otherwise provided by this act, a provider shall pay to the authority an annual maintenance fee as required under this act.

(2) The authority shall determine for each provider the amount of fees required under this section. April 1 to March 31 shall be the annual period covered by each assessment and April 29 the date due for payment. The authority shall prescribe the schedule for the allocation and disbursement of the fees under this act. The authority shall disburse the annual maintenance fee to each municipality as provided under sections 10, 11, and 12 on or before the last day of the month following the month of receipt of the fees by the authority. The authority may authorize the department of treasury to collect and make the allocations and disbursements of fees required under this act. Any interest accrued on the revenue collected under this act shall be used only as provided by this act.

(3) Except as otherwise provided under subsection (6), for the period of November 1, 2002 to March 31, 2003, a provider shall pay an initial annual maintenance fee to the authority on April 29, 2003 of 2 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area, prorated for the period specified in this subsection.

(4) Except as otherwise provided under subsection (6), for each year after the initial period provided for under subsection (3), a provider shall pay the authority an annual maintenance fee of 5 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area.

(5) The fee required under this section is based on the linear feet occupied by the provider regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider.

(6) In recognition of the need to provide nondiscriminatory compensation to municipalities for management of their rights-of-way, the fees required under this section shall be the lesser of the amounts prescribed under subsections (3) and (4) or 1 of the following:

(a) For a provider that was an incumbent local exchange carrier in this state on January 1, 2002, the fees within the exchange in which that provider was providing basic local exchange service on January 1, 2002, when restated by the authority on a per access line per year basis, shall not exceed the statewide per access line per year fee of the provider with the highest number of access lines in this state. The authority shall annually determine the statewide per access line per year fee by dividing the amount of the total annual fees the provider is required to pay under subsections (3) and (4) by the provider's total number of access lines in this state.

(b) For all other providers in an exchange, the fee per linear foot for the provider's facilities located in the public rights-of-way in that exchange shall be the same as that of the incumbent local exchange carrier.

(7) If the provider with the highest number of access lines in this state is unable to provide the exact number of linear feet for a determination under subsection (6), the provider shall no later than February 1, 2003 make a good faith estimate, in consultation with the staff of the authority, of the number of linear feet of rights-of-way in which facilities owned by the provider are located in a metropolitan area and pay an annual maintenance fee to the authority based upon the estimate.

(8) If an estimate of the linear feet is made under subsection (7), the statewide per access line per year cost shall be determined by the authority based on that provider's good faith estimate. Upon the true up of the estimated linear feet under subsection (9), the authority shall adjust the fees of all providers affected by subsection (6).

(9) Within 360 days of the effective date of this act, a provider making an estimate under subsection (8) shall true up the estimated amount of linear feet of the provider's facilities in rights-of-way in a metropolitan area to the actual amount of linear feet of rights-of-way in a metropolitan area owned by the provider. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located exceeds the estimated amount, the provider shall pay the authority the difference within 30 days of the true up. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located is less than the estimated amount, the provider shall receive a corresponding credit from the authority against the annual maintenance fee due for payment in the succeeding year.

(10) The authority may prescribe the forms, standards, methodology, and procedures for assessing fees under this act. Each provider and municipality shall provide reasonably requested information regarding public rights-of-way that is required to assist the authority in computing and issuing the assessments under this section.

(11) Notwithstanding any other provision of this act, a provider possessing a franchise or operating with the consent of a municipality to provide and that is providing cable services within a metropolitan area is subject to an annual maintenance fee of 1 cent per linear foot of public right-of-way occupied by the provider's facilities within the metropolitan area. An affiliate of such a provider shall not pay any additional fees to occupy or use the same facilities in public rights-of-way as initially constructed for and used by a cable provider. The fee required under this subsection is in lieu of any other maintenance fee or other fee except for fees paid by the provider under a cable franchise or consent agreement. A cable franchise or consent agreement from a municipality that allows the municipality to seek right-of-way related information comparable to that required by a permit under this act and that provides insurance for right-of-way related activities shall satisfy any requirement for the holder of the cable franchise or consent agreement or its affiliates to obtain a permit to provide information services or telecommunications services in the municipality.

(12) The cable provider may satisfy the fee requirement under subsection (11) by certifying to the authority that the provider's aggregate investment in this state, since January 1, 1996, in facilities capable of providing broadband internet transport access service exceeds the aggregate amount of the maintenance fees assessed under subsection (11).

(13) The fees collected under this act shall be used only as provided by this act and shall be subject to an audit by the state auditor general.

(14) A provider may apply to the commission for a determination of the maximum amount of credit available under section 13b(5) of 1905 PA 282, MCL 207.13b. Each application shall include sufficient documentation to permit the commission to accurately determine the allowable credit. Except as otherwise provided under subsection (15), the commission shall issue its determination within 45 days from the date of the application.

Upon certification by the commission of the documentation provided in subdivisions (a) and (b), a provider shall qualify for a credit equal to the costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b, and shall not be subject to subsection (16) if the provider files the following documentation under this subsection:

(a) Verification of the costs paid by the provider under this act.

(b) Verification that the provider's rates and charges for basic local exchange service, including revenues from intrastate subscriber line or end-user line charges, do not exceed the commission's approved rates and charges for those services.

(15) If the commission finds that it cannot make a determination based on the documentation required under subsection (14), it may require the provider to file its application under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(16) The maximum credit allowed under subsection (14) or (15) shall be the lesser of the following:

(a) The costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b.

(b) The amount that the costs paid under this act, together with the provider's total service long run incremental cost of basic local exchange service, exceeds the provider's rates for basic local exchange service plus any additional charges of the provider used to recover its total service long run incremental cost for basic local exchange service. "Total service long run incremental cost" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(17) The tax credit allowed under subsections (14) and (15) shall be the sole method of recovery for the costs required under this act. A provider shall not recover the costs required under this act through rates and charges to the end-users for telecommunication services.

(18) An educational institution is not required to pay the fees and charges or fulfill the mapping requirements required under this act for facilities that are constructed and used as provided under applicable provisions of section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307. To the extent that an educational institution provides services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, the educational institution shall obtain a permit, pay the fees and charges, and fulfill the mapping requirement required under this act for each linear foot of public right-of-way used in providing telecommunication services to residential or commercial customers. An educational institution shall notify the commission if it provides telecommunication services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, to a residential or commercial customer for compensation.

(19) An electric or gas utility, or an affiliate of a utility, or an electric transmission provider is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for electric or gas utility services including internal utility communications and customer services such as billing or load management. The electric or gas utility, or an affiliate of a utility, or an electric transmission provider shall only obtain a permit, pay the fees and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the utility, or its affiliate, for compensation. An electric or gas

utility, or an affiliate of a utility, or an electric transmission provider shall notify the commission if the electric or gas utility, or an affiliate of a utility, or an electric transmission provider provides or leases telecommunication services to a person other than the utility or its affiliate for compensation. For the purposes of this subsection, electric and gas utility services include billing and metering services performed for an alternative electric supplier, an alternative gas supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(20) A state, county, municipality, municipally owned utility, or an affiliate is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for state, county, municipality, or governmental entity, or utility services including internal state, county, municipality, governmental entity, or utility communications and customer services such as billing or load management. The state, county, municipality, municipally owned utility, or an affiliate shall only obtain a permit, pay the fees and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. A state, county, municipality, municipally owned utility, or an affiliate shall notify the commission if the state, county, municipality, municipally owned utility, or an affiliate provides or leases telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. For the purposes of this subsection, utility services include billing and metering services performed for an alternative electric supplier, an alternative gas supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(21) The authority may grant to a provider a waiver of the fee requirement of this section for telecommunication facilities located in underserved areas as identified by the authority if 2/3 of the affected municipalities approve the granting of a waiver. If a waiver is granted under this subsection, the amount of the waived fees shall be deducted from the fee revenue the affected municipalities would otherwise be entitled under sections 11 and 12. A waiver granted under this subsection shall not be for more than 10 years. As used in this subsection, "underserved area" means that term as defined under section 7 of the Michigan broadband development authority act.

484.3109 Fee discount.

Sec. 9. (1) If 2 or more providers implement a shared use arrangement and meet the requirements of this section, each provider participating in the arrangement is entitled to a discount of the fees required under section 8 as provided under this section.

(2) To qualify for the shared use discount, each participating provider shall do all of the following:

(a) To the extent permitted by the safety provisions of the applicable electrical code, occupy and use the same poles, trenches, conduits, ducts, or other common spaces or physical facilities jointly with another provider.

(b) Coordinate the construction or installation of its own facilities with the construction schedules of another provider so that any pavement cuts, excavation, construction, or other activities undertaken to construct or install the facilities occur contemporaneously and do not impair the physical condition, or interrupt the normal uses, of the public rights-of-way on more than 1 occasion.

(c) Enter the shared use arrangement after the effective date of this act.

(3) This section does not apply to the utilization or attachment to poles, trenches, conduits, ducts, or other common facilities that were placed in the public rights-of-way before the effective date of this act.

(4) Two or more providers that qualify for a shared use discount are entitled to a 40% discount of the fees imposed by section 8 for each linear foot of public right-of-way in which the shared use occurs.

484.3110 Fee-sharing payments.

Sec. 10. (1) Except as reduced by the amount provided for under subsection (2), the authority shall allocate the annual maintenance fees collected under this act to fund the fee-sharing mechanism under section 11.

(2) To the extent that fees exceed $30,000,000.00 in any year and are from fees for linear feet of rights-of-way in which telecommunication facilities are constructed by a provider after the effective date of this act, the authority shall allocate that amount to fund the fee-sharing mechanism under section 12.

(3) To be eligible to receive fee-sharing payments under this act, a municipality shall comply with this act. For the purpose of the distribution under sections 11 and 12, a municipality is considered to be in compliance with this act unless the authority finds to the contrary in a proceeding against the municipality affording due process initiated by a provider, the commission, or the attorney general. If a municipality is found not to be in compliance, fee-sharing payments shall be held by the authority in escrow until the municipality returns to compliance. A municipality is not ineligible to receive fee-sharing payments for any matter found to be a good faith dispute or matters of first impression under this act or other applicable law.

(4) The amount received under sections 11 and 12 shall be used by the municipality solely for rights-of-way related purposes. Rights-of-way purposes does not include constructing or utilizing telecommunication facilities to serve residential or commercial customers.

(5) A municipality receiving funds under sections 11 and 12 with a population of less than 10,000 may file and a municipality receiving funds under sections 11 and 12 with a population of 10,000 or more shall file an annual report with the authority on the use and disposition of the funds. The authority shall prescribe the form of the report to be filed under this subsection, which report shall be in a simplified format.

484.3111 Fee sharing; allocation of fund under section 10(1); excluded municipalities.

Sec. 11. (1) The authority shall allocate the funding provided for fee sharing under section 10(1) as follows:

(a) 75% to be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under section 13 of 1951 PA 51, MCL 247.663, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under section 13 of 1951 PA 51, MCL 247.663, for the most recent year.

(b) 25% to be disbursed to townships in a metropolitan area on the basis of each township's proportionate share of the total linear feet of public rights-of-way occupied by providers within all townships located in metropolitan areas.

(2) Except as otherwise provided under sections 13 and 14, municipalities that are ineligible under section 13 or 14 shall be excluded from the computation, allocation, and distribution of funding under this section.

484.3112 Fee sharing; allocation of fund under section 10(2); weighted linear feet; excluded municipalities.

Sec. 12. (1) The authority shall allocate the funding provided for fee sharing under section 10(2) as follows:

(a) The amount available under this section multiplied by the percentage of weighted linear feet attributable to cities and villages, as compared to the total weighted linear feet attributable to cities, villages, and townships, shall be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under section 13 of 1951 PA 51, MCL 247.663, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under section 13 of 1951 PA 51, MCL 247.663, for the most recent year.

(b) The amount available under this section multiplied by the percentage of weighted linear feet attributable to townships, as compared to the total weighted linear feet attributable to cities, villages, and townships, shall be disbursed to townships on the basis of each township's proportionate share of the total unweighted linear feet of public rights-of-way in or on which providers' facilities are located within all townships located in metropolitan areas.

(2) The following shall be used under this section in determining the weighted linear feet in which telecommunications facilities are first placed by any telecommunications provider after the effective date of this act:

(a) All underground linear feet shall receive a weight of 3.0.

(b) All linear feet in a city, village, or township with a population in excess of 5,000 and not covered under subdivision (a) shall receive a weight of 2.0.

(c) All other linear feet shall receive a weight of 1.0.

(3) Except as otherwise provided under sections 13 and 14, municipalities that are ineligible under section 13 or 14 shall be excluded from the computation, allocation, and distribution of funding under this section.

484.3113 Modification of fees by municipality.

Sec. 13. (1) A municipality is not eligible to receive funds under sections 11 and 12 unless by December 31, 2003 the municipality has modified to the extent necessary any fees charged to providers after the effective date of this act relating to access to and usage of the public rights-of-way to an amount not exceeding the amounts of fees and charges required under this act.

(2) To the extent a telecommunications provider pays fees to a municipality that have not been modified as required by this section, both of the following apply:

(a) The provider may deduct the fees paid from the fee required to be paid under section 8 for those rights-of-way.

(b) The amounts received shall be deducted from the amounts the municipality is eligible to receive under sections 11 and 12.

(3) The authority may allow a municipality in violation of this section to become eligible to receive funds under sections 11 and 12 if the authority determines that the violation occurred despite good faith efforts and the municipality rebates to the authority

any fees received in excess of those required under section 8, including any interest as determined by the authority.

(4) A municipality is considered to have modified the fees under subsection (1) if it has adopted a resolution or ordinance, effective no later than January 1, 2004, approving the modification so that providers with telecommunication facilities in public rights-of-way within the municipality's boundaries pay only those fees required under section 8. The municipality shall provide each provider affected by the fee a copy of the resolution or ordinance passed under this subsection.

(5) Except as otherwise provided by a municipality, if section 8 is found to be invalid or unconstitutional, a modification of fees under this section is void from the date the modification was made.

(6) To be eligible to receive fee-sharing payments under this act, a municipality shall not hold a cable television operator in default or seek any remedy for failure to satisfy an obligation, if any, to pay after the effective date of this act a franchise fee or other similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

484.3114 Telecommunication or cable modem service through broadband internet access transport service; requirements; exceptions; violation; complaint.

Sec. 14. (1) Except as otherwise provided by subsection (2), a county, municipality, or an affiliate, shall comply with all of the following requirements:

(a) Before the passage of any ordinance or resolution authorizing a county or municipality to either construct telecommunication facilities or provide a telecommunication or cable modem service provided through a broadband internet access transport service, a county or municipality shall conduct at least 1 public hearing. A notice of the public hearing shall be provided as required by law.

(b) Not less than 30 days before the hearing required under subdivision (a), the county or municipality shall prepare reasonable projections of at least a 3-year cost-benefit analysis. This analysis shall identify and disclose the total projected direct costs of and the revenues to be derived from constructing the telecommunication facilities and providing the telecommunication or cable modem service through a broadband internet access transport service. The costs shall be determined by using accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) A county or municipality shall prepare and maintain accounting records in accordance with accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a. The accounting records required under this subdivision are subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(d) Charges for telecommunication service and cable modem services provided through a broadband internet access transport service shall include all of the following:

(*i*) All capital costs attributable to the provision of the service.

(*ii*) All costs attributable to the provision of the service that would be eliminated if the service was discontinued.

(*iii*) The proportionate share of costs identified with the provision of 2 or more county or municipal services including telecommunication services.

(e) A county or municipality that provides a telecommunication service or cable modem service provided through a broadband internet access transport service shall not adopt an ordinance or a policy that unduly discriminates against another person providing

the same service. Subject to other requirements of this section, this subsection shall not be construed as precluding a county or municipality from establishing rates different from those of another person providing the same service.

(f) In providing a telecommunication or cable modem service provided through a broadband internet access transport service, a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality upon other providers of the same service within its jurisdiction concerning access to public rights-of-ways.

(g) A municipality shall not impose or enforce against a provider any local regulation with respect to public rights-of-way that is not also applicable to the municipality in its provision of a telecommunication or cable modem service provided through a broadband internet access transport service.

(h) In providing a telecommunication or a cable modem service provided through a broadband internet access transport service, a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality upon other providers of the same service within its jurisdiction concerning access to and rates for pole attachments.

(2) Subsection (1) does not apply to either of the following:

(a) Telecommunication facilities constructed and operated by a county, municipality, or an affiliate, to provide telecommunication service or a cable modem service provided through a broadband internet access transport service that is not provided to any residential or commercial premises.

(b) Telecommunication facilities that are owned or operated by a county, municipality, or an affiliate for compensation, and that are located within the territory served by the county, municipality or its affiliate that provided a telecommunications service or a cable modem service provided through broadband internet access transport service before December 31, 2001 or that allowed any third party to use the county's or municipality's telecommunication facilities for compensation before December 31, 2001, to provide such a service.

(3) If a complaint is filed under section 18 alleging a violation of this section, the commission shall allow a county or municipality to take reasonable steps to correct a violation found by the commission before the commission imposes any penalties.

(4) The commission, in reviewing a complaint under subsection (3), shall consider, in determining whether charges imposed by a county or municipality are in compliance with subsection (1), the applicable federal, state, county, and local taxes and fees paid by the complainant or providers serving that county or municipality.

484.3115 Provider access to and use of public rights-of-way.

Sec. 15. (1) Except as otherwise provided in this section, a municipality shall, upon application, grant to providers a permit for access to and the ongoing use of all public rights-of-way located within its municipal boundaries. A municipality shall act reasonably and promptly on all applications filed for a permit involving an easement or public place.

(2) This section shall not limit a municipality's right to review and approve a provider's access to and ongoing use of a public right-of-way or limit the municipality's authority to ensure and protect the health, safety, and welfare of the public.

(3) A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way. A provider's right to access and use of a public right-of-way shall not be unreasonably

denied by a municipality. A municipality may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider's access and use.

(4) Any conditions of a permit granted under this section shall be limited to the provider's access and usage of any public right-of-way.

(5) A provider undertaking an excavation or constructing or installing facilities within a public right-of-way or temporarily obstructing a public right-of-way, as authorized by the permit, shall promptly repair all damage done to the street surface and all installations on, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition. The authority shall also have the jurisdiction to require the repair and restoration of any right-of-way, including state right-of-way, which has not been repaired or restored after installation.

484.3116 Cable franchise.

Sec. 16. This act does not affect the requirement of a cable operator to obtain a cable franchise from a municipality.

484.3117 Review of decision or review.

Sec. 17. A decision or assessment of the authority is subject to a de novo review by the commission upon the request of an interested person. A decision or order of the commission issued under this act is subject to review as provided under section 26 of 1909 PA 300, MCL 462.26.

484.3118 Complaint; proceeding; remedies and penalties.

Sec. 18. (1) Except as otherwise provided by this act, the time requirements and procedures governing a complaint proceeding under this act shall be the same as those under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(2) If after notice and hearing the commission finds that a person has violated this act, the commission shall order remedies and penalties to protect and make whole persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) For failure to pay an undisputed fee assessed by the authority under this act, order the provider to pay a fine of not more than 1% of the amount of the unpaid assessment for each day that the assessment remains unpaid. For each subsequent offense under this subdivision, a fine of not more than 2% for each day the assessment remains unpaid.

(b) For a violation under section 14, order the suspension or termination of all or a portion of the fee-sharing payments to the municipality provided for under section 11 or 12.

(c) Order the person who violated this act to pay a fine of not less than $200.00 or more than $20,000.00 per day that the person is in violation. For each subsequent offense, a fine of not less than $500.00 or more than $40,000.00 per day that the person is in violation of this act.

(d) If the person is a provider, order that the provider's permit allowing access to and use of a municipality's public right-of-way be conditioned or amended.

(e) Issue cease and desist orders.

(f) Order the person who violates this act to pay attorney fees and actual costs of a person that is not a provider of telecommunication services to 250,000 or more end-users.

484.3119 Provisions found invalid or unconstitutional; effect.

Sec. 19. (1) If the application of any provision of section 8 to a certain person is found to be invalid or unconstitutional, that provision and sections 3 and 15 shall not apply to any person.

(2) If section 15 does not apply under subsection (1), the permit process for access to and use of public rights-of-way shall be as follows:

(a) Except as provided in subdivisions (b) and (c), a local unit of government shall grant a permit for access to and the ongoing use of all rights-of-way, easements, and public places under its control and jurisdiction to providers of telecommunication services.

(b) This section shall not limit a local unit of government's right to review and approve a provider's access to and ongoing use of a right-of-way, easement, or public place or limit the unit's authority to ensure and protect the health, safety, and welfare of the public.

(c) A local unit of government shall approve or deny access under this section within 90 days from the date a provider files an application for a permit for access to a right-of-way, easement, or public place. A provider's right to access and use of a right-of-way, easement, or public place shall not be unreasonably denied by a local unit of government. A local unit of government may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost, to ensure that the right-of-way, easement, or public place is returned to its original condition during and after the provider's access and use.

(d) Any conditions of a permit granted under this subsection shall be limited to the provider's access and usage of any right-of-way, easement, or public place.

(e) Any fees or assessments made under this subsection shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting a permit and maintaining the rights-of-way, easements, or public places used by a provider.

(f) A provider using the highways, streets, alleys, or other public places shall obtain a permit as required under this subsection.

(3) If section 15 does not apply under subsection (1), it is the intent of the legislature in enacting subsection (2) to return to the status quo prior to the effective date of this act for the granting of permits for access to and the use of all rights-of-way. Subsection (2) shall have the same construction and interpretation as sections 251 to 254 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 to 484.2254, had prior to the repeal of these sections by this act.

(4) Except as provided under subsection (1), if any other provision or the application of any provision of this act to a certain person is found to be invalid or unconstitutional, the remaining provisions or application of a provision to other persons shall not be affected and will remain in full force and effect.

484.3120 Supreme court opinion; request by legislature or governor.

Sec. 20. Pursuant to section 8 of article III of the state constitution of 1963, either house of the legislature or the governor may request the opinion of the supreme court on important questions of law as to the constitutionality of this act.

Repeal of §§ 484.2251, 484.2252, 484.2253, and 484.2254.

Enacting section 1. Sections 251, 252, 253, and 254 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, 484.2252, 484.2253, and 484.2254, are repealed.

Effective date.

Enacting section 2. This act takes effect November 1, 2002.

Conditional effective date.

Enacting section 3. This act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 881.

(b) Senate Bill No. 999.

This act is ordered to take immediate effect.
Approved March 14, 2002.
Filed with Secretary of State March 14, 2002.

Compiler's note: Senate Bill No. 881, referred to in enacting section 3, was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 49, Imd. Eff. Mar. 14, 2002.

Senate Bill No. 999, also referred to in enacting section 3, was filed with the Secretary of State March 14, 2002, and became P.A. 2002, No. 50, Imd. Eff. Mar. 14, 2002.

[No. 49]

(SB 881)

AN ACT to create the Michigan broadband development authority; to create funds and accounts; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority; and to provide incentives for the development of broadband services.

The People of the State of Michigan enact:

484.3201 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan broadband development authority act".

484.3202 Legislative findings.

Sec. 2. The legislature finds that certain areas of this state are not being adequately served with broadband services and that, for the benefit of the people of this state and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of this state, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout this state and that the private sector should be encouraged to invest in the deployment of broadband services and networks and that financing by this authority will encourage broadband investment. This act shall provide a method to assure that economic, technological, and logistical integrated broadband services are provided throughout this state on a nondiscriminatory basis. The provision of affordable broadband services and networks will assure the long-term growth of and the enhancement and delivery of services by the educational, medical, commercial, and governmental entities within this state, including, but not limited to, municipalities and counties, public safety facilities, judicial and criminal facilities, telemedical facilities, schools, colleges, universities, hospitals, libraries, community centers, businesses, nonprofit organizations, and residential properties. To increase the speed and availability at which affordable broadband services become available in this state, it is declared to be a valid public purpose to assist in the

financing and refinancing of the private and public sectors' development of a statewide broadband infrastructure. It is further declared to be a valid public purpose for the authority created under this act to issue bonds and notes to provide for financing or refinancing to broadband developers and broadband operators, to make loans and provide joint venture and partnership arrangements subject to section 7(2) and (3) to broadband developers and broadband operators, to enter into contracts for the lease or management of all or portions of the broadband infrastructure, and to enter into joint venture and partnership arrangements and partnerships with persons that will acquire, construct, develop, create, maintain, own, and operate all or portions of the broadband infrastructure. The legislature finds that the authority created and powers conferred by this act constitute a necessary program and serve a necessary public purpose.

484.3203 Definitions.

Sec. 3. As used in this act:

(a) "Authority" means the Michigan broadband development authority created under section 4.

(b) "Board" means the board of directors of the authority.

(c) "Capital reserve fund requirement" means the fund amount requirement that may be established in the resolution authorizing notes or bonds for which a capital reserve fund has been established under section 8. The required amount shall not exceed the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on the notes or bonds secured in whole or in part by the fund.

(d) "Broadband developer" means a person selected by the authority to acquire, construct, develop, and create any part of the broadband infrastructure.

(e) "Broadband infrastructure" means all facilities, hardware, and software and other intellectual property necessary to provide broadband services in this state, including, but not limited to, voice, video, and data.

(f) "Broadband operator" means a person selected by the authority to operate any part of the broadband infrastructure.

(g) "Broadband services" means those services, including, but not limited to, voice, video, and data, that provide capacity for transmission in excess of 200 kilobits per second in at least 1 direction regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable. If voice transmission capacity is offered in conjunction with other services utilizing transmission in excess of 200 kilobits per second, the voice transmission capacity may be less than 200 kilobits per second.

(h) "Development costs" means the costs associated with the broadband infrastructure that have been approved by the authority and include, but are not limited to, all of the following:

(*i*) The costs for the planning, acquiring, leasing, constructing, maintaining, and operating of the broadband infrastructure.

(*ii*) Payments for options to purchase, deposits on contracts of purchase, and payments for the purchases of properties for the broadband infrastructure.

(*iii*) Financing, refinancing, acquisition, demolition, construction, rehabilitation, and site development of new and existing buildings.

(*iv*) Carrying charges during construction.

(*v*) Purchases of hardware, software, facilities, or other expenses related to the broadband infrastructure.

(*vi*) Legal, organizational, and marketing expenses, project manager and clerical staff salaries, office rent, and other incidental expenses.

(*vii*) Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.

(*viii*) Any other costs and expenses necessary for the acquisition, construction, maintenance, and operation of all or portions of the broadband infrastructure.

(i) "Person" means an individual, corporation, limited or general partnership, joint venture, or limited liability company or a governmental entity, including state authorities, municipalities, counties, and townships, police, fire and other public safety organizations, judicial entities, medical entities, schools, colleges, universities, hospitals, libraries, community centers, and local economic development entities. Except to the extent that state authorities, police, fire, and other public safety organizations, judicial entities, medical entities, schools, colleges, universities, hospitals, and libraries may constitute state entities, person does not include this state.

484.3204 Michigan broadband development authority; creation; duties.

Sec. 4. (1) The Michigan broadband development authority is created as a public body corporate and politic within the department of treasury.

(2) The authority may do all of the following:

(a) Assist through financing and refinancing the expansion of broadband infrastructure services to residential, commercial, public, and nonprofit customers in this state.

(b) Authorize the issuance of bonds and notes to finance or refinance the private and public sectors' development of the broadband infrastructure.

(c) Authorize the making of loans and joint venture and partnership arrangements subject to section 7(2) and (3) to broadband developers and broadband operators.

(d) Authorize the imposition and collection of rents, charges, and fees for the services furnished by the broadband infrastructure in conjunction with financing entered into by the authority.

(e) Enter into joint venture and partnership arrangements and partnerships subject to section 7(2) and (3) to acquire, construct, maintain, and operate the broadband infrastructure.

(f) Assist broadband developers and operators with all other matters necessary for the acquisition, construction, maintenance, and operation of the broadband infrastructure.

(g) Continuously evaluate all types of technologies in order to encourage the widest deployment of broadband services and broadband infrastructure in this state.

(h) Make broadband services to schools and libraries a priority under authority financing programs.

(i) Insure that the financing and refinancing of the development of broadband services under this act includes provisions that small businesses and that each region of this state have an equal opportunity to receive financing and refinancing.

484.3205 Administrative functions; performance under direction and supervision of state treasurer.

Sec. 5. The authority shall exercise its duties independently of the state treasurer. The budgeting, procurement, and related administrative functions of the authority shall be performed under the direction and supervision of the state treasurer.

484.3206 Board of directors; membership; service of representative in member's absence; compensation; chairperson; officers; quorum; voting; open meetings act; confidentiality; "trade secrets, commercial, financial, or proprietary information" defined; employees; discharge of duties.

Sec. 6. (1) The authority shall exercise its duties through its board of directors.

(2) The board shall be made up of the following members:

(a) The president and CEO of the Michigan economic development corporation.

(b) The state treasurer.

(c) The executive director of the Michigan state housing development authority.

(d) Eight members with knowledge, skill, or experience in the academic, business, technology, or financial fields appointed by the governor with the advice and consent of the senate. Not more than 2 of the 8 appointed members shall be, during their term on the board, employees of this state. The 2 members of the board who are employees of the state under this subdivision shall not hold any other positions with the state during their term on the board. Six of the 8 appointed members shall serve for fixed terms. Not more than 3 of the 6 appointed members serving for fixed terms shall be members of the same political party. Of the 6 fixed-term members first appointed, 2 shall be appointed for a term that expires December 31, 2003, 2 shall be appointed for a term that expires December 31, 2004, and 2 shall be appointed for a term that expires December 31, 2005. Upon completion of each fixed term, a member shall be appointed for a term of 4 years. The 2 appointed members serving without a fixed term shall serve at the pleasure of the governor. The 8 appointed members shall serve until a successor is appointed. A vacancy in a fixed-term membership shall be filled for the balance of the unexpired term in the same manner as the original appointment. As used in this subdivision, "members of the same political party" includes a person who, in the determination of the governor, is currently a member of the same political party and a person who was a member of the same political party at any time within the immediately preceding 2 years, as attested by the person to be appointed.

(3) Each member of the board serving under subsection (2)(a), (b), and (c) may appoint a representative to serve in his or her absence.

(4) Except for the board president, who shall serve as the board's chief executive officer pursuant to subsection (5), and vice president, members of the board shall serve without compensation but may receive reasonable reimbursement for necessary travel and expenses incurred in the discharge of their duties. The board shall establish reasonable compensation for the board president and vice president.

(5) The governor shall designate 1 member of the board to serve as its chairperson who shall serve at the pleasure of the governor. Of the 2 board members serving without a fixed term at the pleasure of the governor, the governor shall designate 1 member to serve as the board's president and chief executive officer and the other member to serve as its vice president.

(6) A majority of the serving members of the board shall constitute a quorum of the board for the transaction of business. Actions of the board shall be approved by a majority vote of the members present at a meeting. The business of the board shall be conducted in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A record or portion of a record, material, information, or other data received, prepared, used, or retained by the authority in connection with an application to or project related to the broadband infrastructure assisted by the authority that relates to trade

secrets, commercial, financial, or proprietary information submitted by the applicant, and which is requested in writing by the applicant and acknowledged in writing by the president of the authority to be confidential, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. As used in this subsection, "trade secrets, commercial, financial, or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the applicant significant competitive harm.

(8) The authority may employ or contract for legal, financial, and technical experts, and officers, agents, and employees, permanent and temporary, as the authority requires, and shall determine their qualifications, duties, and compensation. The board may delegate to 1 or more agents or employees those powers or duties with any limitations that the board considers proper.

(9) The members of the board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, or 1968 PA 318, MCL 15.301 to 15.310.

(10) A member of the board or officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties of his or her position, a member of the board or an officer, employee, or agent of the authority, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board or officer, employee, or agent of the authority to be correct by the president or the officer of the authority having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants to fairly reflect the financial condition of the authority.

484.3207 Powers of authority.

Sec. 7. (1) The powers of the authority shall include all those necessary to carry out and effectuate the purposes of this act, including, but not limited to, all of the following:

(a) To borrow money and issue bonds and notes to fund operations of the authority, to finance or refinance part or all of the development costs of the broadband infrastructure, to refinance existing debt for technology that constitutes a part of or is related to the broadband infrastructure, and to secure bonds and notes by mortgage, assignment, or pledge of any of its revenues and assets.

(b) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(c) To enter into joint venture and partnership arrangements subject to subsections (2) and (3) with persons that will acquire, construct, develop, maintain, and operate all or portions of the broadband infrastructure.

(d) To be designated the state program manager for federal telecommunications assistance, to represent this state in negotiations with the federal government regarding telecommunications assistance, and to receive and distribute federal funding, including loans, grants, and other forms of funding and assistance on this state's behalf.

(e) To receive and distribute state or local funding including grants, loans, general appropriations, or an appropriation made for the purposes under subsection (4).

(f) To make loans and to enter into any joint venture and partnership arrangements subject to subsections (2) and (3) with broadband developers and broadband operators

that will acquire, construct, maintain, and operate all or portions of the broadband infrastructure.

(g) To provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers, in conjunction with broadband infrastructure financed by the authority.

(h) To impose and collect charges, fees, or rentals for the services furnished by those portions of the broadband infrastructure financed by the authority under this act.

(i) To set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(j) To acquire from any person interests in real or personal property necessary for the operation of the authority.

(k) To procure insurance against any loss in connection with the broadband infrastructure and any other property, assets, or activities of the authority.

(*l*) To sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.

(m) To enforce financial, operational, warranty, security, lease, and guaranty terms and conditions established under financings by the authority. The authority may under this subsection acquire, construct, develop, lease, create, and maintain all or portions of the broadband infrastructure and acquire from any person interests in real and personal property.

(n) To make and amend bylaws.

(o) To indemnify and procure insurance indemnifying any members of the board of the authority from personal liability by reason of their service as a board member.

(p) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of this state and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in this state to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(2) Notwithstanding any other provision of this act, the authority shall not make loans to, or enter into any joint venture and partnership arrangements or participation with, any governmental entity or nonprofit organization except in connection with the financing or refinancing of development costs for that allocable portion of the broadband infrastructure used or to be used exclusively by governmental entities or nonprofit organizations, including, but not limited to, universities, colleges, hospitals, school districts, public safety agencies, judicial organizations, libraries, cities, townships, and counties. No allocable portion of the broadband infrastructure financed by a loan to a governmental entity or a nonprofit organization shall be used to serve residential, business, or other commercial customers.

(3) Notwithstanding any other provision of this act, except in connection with financing or refinancing under subsection (2) or enforcement procedures authorized under subsection (1)(m), the authority shall acquire real or personal property constituting portions of the broadband infrastructure only in connection with the participation of persons other than governmental entities or nonprofit organizations through joint ventures and partnership arrangements, or other co-ownership arrangements and only if the participation is necessary to assure availability of financing or refinancing derived from the issuance by the authority of bonds or notes, the interest on which is exempt from taxation under the United States internal revenue code, and the financing derived from

the tax-exempt bonds or notes is allocated only to those development costs relating to that portion of the broadband infrastructure that is to be used by governmental bodies or nonprofit organizations.

(4) The authority shall establish a seed capital loan program to make capital loans to persons planning to apply to the authority for financing of broadband infrastructure. Priority for the seed capital loan program shall be given for developments targeted to underserved areas. During the initial 2 years of operations, the authority shall designate a minimum of $500,000.00 to be targeted to rural underserved areas and a minimum of $500,000.00 targeted to urban underserved areas. Community economic development programs and small providers shall be given a preference to receive loans under this subsection. The terms and conditions for the seed capital loans shall be established by the authority. As used in this act, "underserved areas" means geographical areas of this state identified by the authority as having the greatest need for broadband development. In identifying underserved areas, the authority shall consider the area's economic conditions, including, but not limited to, family income, affordability of access, lack of options available, low percentage of residents subscribing, and any other criteria considered important by the authority in determining whether an area is underserved.

(5) As part of an application for financing under this act, the broadband developer and broadband operator shall file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public of the availability of broadband services. The authority shall not approve an application unless a plan is submitted under this subsection.

484.3208 Reserve capital account; creation; administration; credit of proceeds from sale of notes or bonds; capital reserve fund; creation; use; security arrangements; transfer of income or interest earned.

Sec. 8. (1) A reserve capital account is created under the jurisdiction and control of the authority and shall be administered by the authority to secure notes and bonds of the authority. The authority shall credit to the reserve capital account the proceeds of the sale of notes or bonds to the extent provided for in the authorizing resolution of the authority, and any other money that is made available to the authority for the purpose of the reserve capital account.

(2) In the resolution authorizing the issuance of notes or bonds, the authority may establish a capital reserve fund for the payment of the principal and interest of notes or bonds, for the purchase or redemption of the notes or bonds, or for the payment of a redemption premium required to be paid when the notes or bonds are redeemed before maturity. The authority shall not use a capital reserve fund for an optional purchase or optional redemption of notes or bonds if the use would reduce the total of the money in the capital reserve fund to less than the capital reserve fund requirement established for the fund.

(3) In addition to, or in lieu of, depositing money in the reserve capital account or in a capital reserve fund, the authority may obtain or pledge letters of credit, insurance policies, surety bonds, guarantees, or other security arrangements if the security arrangements are approved by the state treasurer. The amount available under letters of credit, insurance policies, surety bonds, guarantees, or other security arrangements pledged to the capital reserve fund shall be credited toward the capital reserve fund requirement for the fund.

(4) Income or interest earned by the reserve capital account may be transferred by the authority to other funds or accounts of the authority.

(5) Income or interest earned by a capital reserve fund may be transferred by the authority to other funds or accounts of the authority to the extent that the transfer does not reduce the total of the amount of money and security arrangements authorized under subsection (3) in the fund below the capital reserve fund requirement for that fund.

484.3209 Capital reserve fund; amount; deficiency; restoration; liability of state for notes or bonds.

Sec. 9. (1) The authority shall accumulate in a capital reserve fund an amount equal to the capital reserve fund requirement for that fund. If at any time the amount of a capital reserve fund falls below the capital reserve fund requirement for that fund, the authority shall transfer from the reserve capital account to the capital reserve fund an amount equal to the capital reserve fund requirement. If a deficiency exists in more than 1 capital reserve fund and the amount in the reserve capital account is not sufficient to fully restore the capital reserve funds, the money in the reserve capital account shall be allocated between the deficient capital reserve funds pro rata according to the amounts of the deficiencies. If at any time the reserve capital account has been exhausted and the amount of the capital reserve fund is insufficient to meet the capital reserve fund requirement, the authority on or before September 1 shall certify to the governor the amount necessary to restore the capital reserve fund to an amount equal to the capital reserve fund requirement for that fund. The governor shall include in his or her annual budget the amount certified under this subsection by the authority.

(2) This state is not liable on notes or bonds of the authority and the notes and bonds are not a debt of this state. The notes and bonds shall contain on their face a statement of the limitation contained under this section.

484.3210 Notes and bonds; issuance, renewal, and refund by authority.

Sec. 10. (1) The authority may issue notes and bonds as provided under this act to do all of the following:

(a) Pay the development costs associated with acquiring, leasing, constructing, maintaining, and operating the broadband infrastructure.

(b) Make loans to persons for development costs.

(c) Make loans to persons to make purchases related to the broadband infrastructure.

(d) Make loans to persons to refinance existing debt of the authority or other persons incurred in connection with the acquisition or development of technology that constitutes a part of or is related to the broadband infrastructure.

(e) Pay the interest on bonds and notes of the authority.

(f) Establish reserves to secure the bonds and notes of the authority.

(g) Make other expenditures necessary to carry out the authority's duties under this act, including the payment of the authority's operating expenses.

(2) The authority may issue renewal notes, issue bonds to pay notes, and refund bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. The authority may issue instruments separate from the obligations described in this subsection that establish a contractual right in the holder of the instrument to require mandatory tender for purchase of the obligations to which the instrument applies for a period of time and subject to provisions as the authority may determine.