211.96 Rejected taxes; list; reassessment.

Sec. 96. (1) The county treasurer shall, on or before June 30 of each year, prepare a statement setting forth all rejected taxes, the reasons for the rejection, and a description of the property upon which the taxes were assessed.

(2) After due examination, if the rejection is approved, the state treasurer shall submit the rejected taxes, through the county treasurer, to the county board of commissioners at the next annual fall session.

(3) If taxes are rejected or charged back by the state treasurer or the county treasurer, unless the property was not subject to taxation at the time the taxes were assessed, the taxes on the property have been paid, or there had been a double assessment of the taxes on the property, the county board of commissioners shall cause the taxes to be reassessed upon the same property, collected with the taxes of the current year, and treated in the same manner as taxes of the current year. Taxes that are rejected or charged back are not subject to penalties other than the penalties that apply to taxes assessed in the current year. If the taxes cannot be properly reassessed upon the same property, the county board of commissioners shall cause the taxes to be reassessed upon the taxable property of the proper local tax collecting unit.

211.97 Rejected taxes on detached lands; statement to state treasurer; tax credit.

Sec. 97. The county board of commissioners shall furnish to the state treasurer a list of all taxes that have been rejected or charged back to their county upon property that has been detached from the county after the taxes were assessed. The state treasurer shall credit to that county the amount charged back, and charge that amount to the county in which the property is situated if the taxes have not been paid or reassessed.

211.98 Conveyance; grounds for withholding; 5 year limitation; cancellation of sale; rejection and reassessment of taxes.

Sec. 98. (1) If property returned to the state treasurer under this act is sold for the nonpayment of taxes and the state treasurer discovers any of the following, the state treasurer shall suspend the sale or forfeiture of that property:

(a) The property was not subject to taxation on the date of the assessment of the taxes for which it was sold.

(b) The taxes had been paid to the proper officer within the time limited by law for payment or redemption.

(c) The sale violated a provision of this act.

(d) A certificate, including the certificate provided for in section 135, tax history, or statement to the effect that all taxes charged against the property has been paid, is given by the proper officer within the time limited by law for payment or redemption.

(e) The description of the property used in the assessment was so indefinite or erroneous as to result in the tax lien being void.

(2) The state treasurer shall withhold a conveyance of property the sale of which is suspended pursuant to subsection (1) and shall, on demand, refund the purchase price to the purchaser with interest at 6% per annum.

(3) If a sale is suspended pursuant to subsection (1)(d), the person on whose behalf the certificate, tax history, or statement was given shall, when presenting the certificate to the state treasurer, pay to the state treasurer all taxes and charges due to this state upon the property at the time the certificate was issued. A refund of the purchase price and interest shall not be made more than 5 years after the expiration of the redemption period.

(4) If the discovery of any of the conditions set forth in subsection (1) is not made until after a conveyance of the property is executed and delivered, a certificate of error may be issued in proper form for recording and the deed, if not recorded, shall be surrendered when the purchase price is refunded. If the deed has been recorded, the purchase price shall be refunded on a recorded release from the holder of the tax deed. Conveyance of the property shall not be withheld or a certificate of error issued more than 5 years after the date of the sale unless 1 or more of the following conditions exist:

(a) The property was not subject to taxation at the time of the assessment of the taxes for which it was sold.

(b) The taxes had been paid to the proper officer within the time limited by law for the payment or redemption.

(5) Refund of the purchase price and interest shall not be made more than 5 years after the purchaser or his or her heirs or assigns was entitled to a tax deed.

(6) If a conveyance of property is withheld or a certificate of error issued under this section, the state treasurer shall cancel the sale. If a conveyance is withheld or certificate of error issued for the reasons set forth in subsection (1)(a), (b), and (e), the state treasurer shall reject the taxes and special assessments for the nonpayment of which the property was sold. The rejected taxes and special assessments shall be reassessed pursuant to section 96. If a conveyance is withheld or certificate of error issued for the reasons set forth in subsection (1)(c) or (d), the state treasurer may proceed to enforce the collection of the taxes under this act.

211.98a Certificate of payment of taxes, certificate of error, or cancellation of sale; payment.

Sec. 98a. (1) If taxes are paid to the officer authorized under this act to receive payment, and the entry of that payment is not made upon the tax roll, a person applying for a certificate of error or a cancellation of the sale for delinquent taxes, and rejection of the taxes, shall present to the state treasurer the certificate of the county treasurer that the taxes were paid on the ..... day of ..... (giving date), as it appears on the copy of the receipt for payment of the taxes on file in the county treasurer's office.

(2) A certified copy of the receipt shall be forwarded to the state treasurer with the certificate.

(3) The county treasurer shall make a certified copy of receipts presented to him or her and file those receipts in his or her office, and shall return the original receipt to the person entitled to the original receipt.

(4) The county treasurer shall immediately notify the person or officer receiving payment of the production of the receipt and require payment to the county treasurer of the amount not discharged by entry upon the tax roll at the time of payment. If the person who received payment does not pay that amount within 30 days of the receipt of the notice, the county treasurer shall bring suit against that person and against his or her bond for the recovery of that amount. On receipt of the amount paid, the county treasurer shall pay that amount to the proper officer of the local tax collecting unit or fund entitled to that amount, and shall notify the county board of commissioners at the annual session in October of the amounts collected and paid.

211.99 Irregularities; records prima facie evidence; presumption; signing of records; deed unimpeachable.

Sec. 99. (1) A tax assessed upon property or a sale of property for a delinquent tax shall not be held invalid by any court of this state on account of any of the following:

(a) An irregularity in any assessment.

(b) An assessment or tax roll not having been made or a proceeding held within the time required by law.

(c) The property having been assessed without the name of the owner, or in the name of any person other than the owner.

(d) Any other irregularity, informality, or omission, or lack of any matter of form or substance in any proceeding that does not prejudice the property rights of the person whose property is taxed.

(2) All proceedings in assessing and levying taxes and in the sale of property for delinquent taxes shall be presumed by all the courts of this state to be legal, unless affirmatively shown to be illegal.

(3) All records, statements, and certificates provided for in this act are prima facie evidence of the facts set forth in the record, statement, or certificate.

(4) The absence of any record of any proceeding, the omission of any mention in any record of any vote or proceeding, or the mention of any matter in any statement or certificate that should appear in the statement or certificate under any law of this state does not affect the validity of any proceeding, tax, or title, if the fact that the vote or proceeding was had or the tax was authorized is shown by any other record, statement, or certificate entered as evidence under this act or any other law of this state.

(5) A tax or sale of property for any tax shall not be rendered or held invalid if a record, statement, certificate, affidavit, paper, or return cannot be found in the proper office. Unless the contrary is affirmatively shown, the presumption is that the record was made, and the certificate, statement, affidavit, paper, or return was duly made and filed.

(6) If any statement, certificate, or record is required to be made or signed by a school district board or the governing body of a local tax collecting unit, that statement, certificate, or record may be made and signed by the members of the school district board or the governing body of a local tax collecting unit, or a majority of the school district board or the governing body of a local tax collecting unit, and it is not necessary that other members be present when each signs the certificate, statement, affidavit, paper, or return.

(7) This section shall not be construed to authorize any showing impeaching the validity of any deed executed by the state treasurer under this act, and that deed is absolute and conclusive as provided in this act.

211.101 Deed to deceased person; title conveyed.

Sec. 101. If property is sold for delinquent taxes and the purchaser or his or her assigns dies before a deed is executed on the sale, the deed may be executed by the state treasurer to and in the name of the deceased person, if the deceased person would be entitled to a deed if still alive, and the deed vests title to the property in the heirs or devisees of the deceased person, in the same manner and liable to the claims of creditors and other persons as if the deed had been executed to the deceased person immediately prior to his or her death. The executor or administrator may assign the certificate of purchase and the deed may issue to the assignee of the certificate.

211.102 Delinquent tax return to department of natural resources; time; record; failure to pay; forfeiture.

Sec. 102. (1) The county treasurer shall, at the same time he or she makes his or her return of delinquent property to the state treasurer, make a similar return to the department of natural resources of all homestead and part paid state property, the fee of

which is in this state, the taxes upon which have not been collected, with a statement of the amount of the taxes.

(2) The department of natural resources shall provide suitable books, and enter in those books the description of every parcel of property returned and the taxes on that property.

(3) The person holding an interest in any parcel of property returned shall, on or before the first day of July following the return, pay to the state treasurer the taxes assessed on that property, with interest at the rate of 1% per month or fraction of a month from the immediately preceding March 1. If the taxes are not paid, the certificate of purchase of that parcel shall become void and that parcel shall be subject to sale and redemption in the same time and manner as property forfeited for nonpayment of interest. A patent shall not be made of that property until all taxes levied on that property are paid.

211.103 Statement of taxes paid; time; credit.

Sec. 103. The department of natural resources shall, on or before the first day of May and November in each year, make out and furnish to the state treasurer a statement containing a description of the property upon which the taxes have been paid, and the amount of the payments. At the same time, the department of natural resources shall transmit to each county treasurer a copy of the statement so far as the same relates to his or her county. The state treasurer shall credit to each county its proper part of those taxes, and the county treasurer shall credit each township with its share of that amount.

211.105 Organization of new county; division of local tax collecting unit; effect on assessments; credit.

Sec. 105. (1) If a new county is organized after the time for making the assessment roll and before the return of the treasurer of the local tax collecting unit, the new organization does not affect the assessment, collection, or return of taxes for that year on any property attached to the new county.

(2) The division of a local tax collecting unit after the time for making the assessment roll and before the return of the treasurer of the local tax collecting unit does not affect the assessment, collection, and return of taxes set forth on that assessment roll. The taxes shall be assessed, collected, and returned as though there had been no division of the local tax collecting unit.

(3) If property is detached from any county after the taxes on property in that county are returned to the state treasurer, and any of those taxes are rejected or set aside, the county from which the taxes were detached shall receive credit, and the county to which they are attached shall be charged.

211.113 Waste; removal of property from lands bid to state prohibited; warrant for seizure and sale of property; agreement; injunctive relief.

Sec. 113. (1) A person shall not remove any building or fixture, sand, gravel, or minerals, or cut or remove any logs, wood, timber, or any other part of property sold for delinquent taxes while this state owns that property or holds a tax lien on that property by virtue of the sale or the nonpayment of any other delinquent taxes.

(2) If a person removes a building or fixture, sand, gravel, or minerals, or cuts or removes logs, wood, timber, or any other part of property in violation of subsection (1), the state treasurer or his or her designated representative shall issue a warrant in the

name of the people of this state directed to the sheriff of the county in which the property is situated. The warrant shall set forth a description of the property and the amount of the unpaid taxes, interest, and charges, and command the sheriff to seize the buildings, fixtures, sand, gravel, minerals, logs, wood, timber, or other property wherever found in any county in this state and to sell the buildings, fixtures, sand, gravel, minerals, logs, wood, timber, or other property or a sufficient quantity of the buildings, fixtures, sand, gravel, minerals, logs, wood, timber, or other property to satisfy the taxes, interest, and charges and the cost of the seizure and sale.

(3) The sheriff shall receive the warrant and execute the warrant as directed in the warrant, as if a levy and sale on execution, and make a return on the warrant to the state treasurer, within 60 days after the receipt of the warrant, and pay all money collected to the state treasurer.

(4) The state treasurer may furnish the state trespass agent with lists or plats of property bid off to this state and on which the taxes remain unpaid. The state trespass agent shall examine the property and promptly report to the state treasurer all violations of this section.

(5) The sheriff and county treasurer of each county shall report any trespass or other acts prohibited by this section to the state treasurer immediately after either has knowledge of the trespass or prohibited act, and any officer of a local tax collecting unit with knowledge of a trespass or prohibited act shall report the facts to the sheriff or county treasurer.

(6) A person with a fee interest or a land contract vendee may enter into a contract and agreement with the state treasurer or the county treasurer, whereby the person may remove any buildings or fixtures, sand, gravel, or minerals, or cut or remove any logs, wood, timber, or any other part of the property If that person posts satisfactory bonds securing to this state absolute protection against loss to this state, a county, or other political subdivision of this state.

(7) This state or any board or department of this state having jurisdiction of property sold or forfeited to this state may obtain an injunction to restrain waste on any of that property, to prevent the removal or tearing down of any building or the removal of a fixture, the removal of any sand, gravel, or minerals, or the cutting or removal of any logs, wood, timber, or any other part of that property, whether or not that act constitutes waste.

(8) The circuit court of the county in which the property or any part of the property is located has jurisdiction to grant injunctive relief upon the filing of a bill or petition for relief whether or not other relief is sought.

211.121 Publication of tax laws; distribution; service claims audit.

Sec. 121. The state treasurer shall, from time to time as necessary, cause to be printed at the expense of this state a sufficient number of copies of this act and other laws relating to the taxation of property, as necessary for a full understanding of all the duties of assessing officers or other state, county, or local tax collecting unit officers. The state treasurer shall include proper side notes, an index, and forms of proceedings, as necessary. The state treasurer shall furnish 1 copy to each supervisor, assessor, clerk for a local tax collecting unit, and county clerk, and 3 copies to each county treasurer. Each copy shall be marked "state property." The state treasurer shall transmit to each county treasurer, at the expense of the county, a sufficient number of copies for each county, and each county treasurer shall immediately furnish to the clerk of each local tax collecting unit in that county 5 copies to be distributed to the officers of the local tax collecting unit entitled to a copy. The state treasurer shall examine and audit all properly certified claims for services rendered and expenses incurred under this section.

211.122 Forms and record books; state treasurer to prescribe.

Sec. 122. The state treasurer shall prescribe or approve all forms, blanks, and record books required under this act. The county clerks and treasurers shall use the blanks prescribed or approved by the state treasurer and no others.

211.127b Abandoned land; state title absolute; state conveyances to city or village; sale; proceeds.

Sec. 127b. (1) Property located within the corporate limits of any city or village, and acquired by this state by the automatic operation of former section 127 prior to June 15, 1933, and not conveyed to this state by the state treasurer, after absolute title to that property has been determined to be in this state by final judgment of a court of competent jurisdiction, and after that judgment is no longer subject to modification or reversal shall be conveyed by the director of the department of natural resources to that city or village.

(2) All property conveyed under this section or any part of that property or interest in that property may be sold by the city or village as provided by law or charter. The proceeds of any sale shall be applied as provided in section 131.

211.130 Taxes canceled; allocation of burden; correction of assessment roll.

Sec. 130. (1) All taxes charged against the property in the office of the state treasurer if the property is deeded to this state shall be canceled. No part of the taxes due to the township or county shall be charged to this state, but this state and the county and township respectively shall bear the share of loss on the taxes that properly belongs to each.

(2) The state treasurer shall make a list of all property deeded to this state in each county on or before the first day of March in each year and transmit the list to the county treasurer. The county treasurer shall serve, or cause to be served, upon the supervisor of the township in which the property is located a copy of the list of property in the township as furnished to the treasurer by the state treasurer.

(3) The supervisor shall produce the list to the board of review while in session for the purpose of reviewing the assessment roll. The supervisor shall omit and cancel from his or her assessment roll all property deeded to this state, as shown by the list. The board of review shall, when in session, compare the assessment roll of the township with the list furnished by the county treasurer, and correct all mistakes.

(4) The property deeded to this state shall not be liable to any assessment for any purpose until the property is sold by this state, and notice of the sale given to the county treasurer by the department of natural resources.

211.135 Recording of conveyances; tax certificate; excepted conveyances; register of deeds; violation; penalty.

Sec. 135. (1) If any deed, land contract, plat of any townsite or village, addition to any townsite, village, or city plat, or any other instrument for the conveyance of title to any property, is presented to the register of deeds of any county in this state for recording or filing, the register of deeds shall require all of the following from the person presenting the instrument for filing:

(a) A certificate from the state treasurer, or from the county treasurer of the county, stating whether there are any tax liens or titles held by this state, or by any individual, against the property sought to be conveyed by the instrument.

(b) A certificate that all taxes due on that property have been paid for the 5 years preceding the date of the instrument.

(c) A certificate from the city, village, or township treasurer in which the property is located, whether there are any tax titles or certificates of tax sale held by the city, village, or township, or by any individual, against the property to be conveyed.

(d) A certificate that all tax titles, tax certificates, or special assessments sold on that property to the city, village, or township have been redeemed for the 5 years preceding the date of the instrument.

(2) If the certificate or certificates required under subsection (1) are not provided, the person presenting the instrument for recording shall not record the instrument until the necessary certificate is presented.

(3) If any instrument is presented for certification on or after March 1 and before the local treasurer of the local tax collecting unit in which the property is located has made his or her return of current delinquent taxes, the county treasurer shall include with his or her certification a notation that the current delinquent return was not available for examination. The register of deeds shall not refuse to record the instrument because of a lack of complete certification.

(4) Taxes canceled by court decree made pursuant to section 67 shall be considered to have been paid within the meaning of this section, provided title to the property against which those taxes were assessed is not in this state on the date of the certificate.

(5) The register of deeds shall note the fact upon the deed that the required certificate or certificates have or have not been presented to him or her when the instrument is presented for recording. If the person presenting the instrument refuses to procure a certificate or certificates, the register of deeds shall endorse that fact upon the instrument, over his or her official signature, and shall refuse to receive and record the instrument.

(6) This section does not apply to any of the following:

(a) The filing of any town or village plat for the purpose of incorporation, insofar as the property included in that plat is included in a plat already filed in the office of the register of deeds, or insofar as the description of the property in that plat is not changed by the plat.

(b) The filing of any copy of the town, village, or city plat if the original plat filed in the office of the register of deeds has been lost or destroyed.

(c) To any sheriff's or commissioner's deed executed for the sale of property under any proceeding in law, or by virtue of any judgment of any of the courts of this state.

(d) To any deed of trust by any assignee, executor, or corporation executed pursuant to any law of this state.

(e) To any quitclaim deed or other conveyance containing no covenants of warranty.

(f) To any patent executed by the president of the United States or the governor of this state.

(g) To any tax deed made by the state treasurer.

(h) To any deed executed by any railroad company conveying its right-of-way, provided the deed is accompanied by a certificate of the state treasurer showing that all specific taxes due from the railroad company have been paid, including taxes levied in the year in which the deed is executed.

(7) A violation of this section by any register of deeds is a misdemeanor, punishable by a fine of not more than $100.00, and he or she is liable to the grantee of any instrument recorded for the amount of damages sustained.

211.138 Treatment of delinquent lands prior to 1891; tender of legal charges; effect.

Sec. 138. (1) All property that has been returned to the state treasurer as delinquent for taxes under the provisions of any general tax law in force prior to the passage of

former 1891 PA 200, and upon which the taxes are unpaid and which have not been sold for those taxes, and all property returned that has been sold for delinquent taxes, and upon which the sale has been or may be set aside by any court of competent jurisdiction or canceled as provided by law, is subject to disposition, sale, and redemption for the enforcement and collection of the tax liens in the method and manner provided in this act.

(2) This section contained does not apply to the sale of any property previously sold, if the sale was set aside or canceled for any reason affecting the validity of the taxes for which the property was sold.

(3) The court may enter decree of sale for the taxes for any year prior to 1891, for the amount of the taxes found valid, without including the charge for interest as provided by law.

(4) If tender of the amount assessed against any property for taxes of 1890 or any prior year is made to the state treasurer, together with the collection fee and the charge for expenses as provided by law, at any time before the first day of the month preceding the month in which sale is ordered to be made, the state treasurer shall issue a receipt and cancel any state bid under which the property is held for that year, and this state and the county and township shall bear the loss of accrued interest in proportion to their interests in the property.

211.139 Examination of proceedings; collection of taxes.

Sec. 139. (1) The state treasurer may cause an examination to be made of the proceedings under which any property bid off to this state, and which has not been deeded by the state treasurer, were sold for delinquent taxes and bid of to this state under the provisions of any general tax law.

(2) If the state treasurer finds that the sales or the decrees under which the sales were made were in contravention of any provision of the laws in force at the time the decrees were entered or sales made, the state treasurer may cancel the sales and proceed at any time to enforce the collection of the taxes under this act.

211.144 Proceedings to set aside sale; state treasurer to be made party; service of petition upon municipalities; representation by attorney general.

Sec. 144. (1) The state treasurer shall be made a party defendant to all actions or proceedings instituted to set aside any sale for delinquent taxes on property that has been sold at annual tax sales, or to set aside any taxes returned to him or her and for which sale has not been made.

(2) A copy of the petition shall be served upon the state treasurer, the prosecuting attorney of the county, and the city, village, township, and school district, for the taxes of which the property was sold or returned delinquent at the time of commencing the action, which service is in lieu of the service of other process. Hearing upon the petition shall not be held until service has been made and proof of service filed.

(3) The state treasurer may cause the attorney general to represent him or her in those proceedings. In any suit or proceedings instituted under this section, no costs shall be assessed against any party to the action.

This act is ordered to take immediate effect.

Approved December 21, 2002.

Filed with Secretary of State December 23, 2002.

Compiler's note: In subsection (1) of MCL 211.139, the phrase "for delinquent taxes and bid of to this state" evidently should read "for delinquent taxes and bid off to this state."

[No. 621]

(HB 6327)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 224b, 2409, 2409a, 2409c, 3515, 3519, and 3528 (MCL 500.224b, 500.2409, 500.2409a, 500.2409c, 500.3515, 500.3519, and 500.3528), section 224b as added and sections 3515 and 3519 as amended by 2002 PA 304, sections 2409 and 2409a as amended by 1993 PA 200, section 2409c as added by 1986 PA 318, and section 3528 as added by 2000 PA 252.

The People of the State of Michigan enact:

500.224b Quality assistance assessment fee; assessment on health maintenance organization having medicaid managed care contract; use; circumstances; definitions.

Sec. 224b. (1) The department of community health shall assess on each health maintenance organization that has a medicaid managed care contract awarded by the state and administered by the department of community health a quality assurance

assessment fee that equals 6% of non-medicare premiums collected by that health maintenance organization.

(2) The quality assurance assessment fee collected under subsection (1) and all federal matching funds attributed to that fee shall be used for the following purposes and under the following specific circumstances:

(a) The quality assurance assessment fee shall be implemented on May 10, 2002.

(b) The quality assurance assessment fee shall be assessed on the non-medicare premiums collected by each health maintenance organization described in subsection (1) based on the health maintenance organization's most recent statement filed with the commissioner pursuant to sections 438 and 438a. Except as otherwise provided, the quality assurance assessment fee shall be payable on a quarterly basis with the first payment due 90 days after the date the fee is assessed. If a health maintenance organization does not have non-medicare premium revenue listed in a filing under section 438 or 438a, the assessment shall be based on an estimate by the department of community health of the health maintenance organization's non-medicare premiums for the quarter and shall be payable upon receipt.

(c) The quality assurance assessment fee shall only be assessed on a health maintenance organization that has in effect a medicaid managed care contract awarded by the state and administered by the department of community health at the time of the assessment.

(d) Beginning October 1, 2007, the quality assurance assessment fee shall no longer be assessed or collected.

(e) The department of community health shall implement this section in a manner that complies with federal requirements. If the department of community health is unable to comply with the federal requirements for federal matching funds under this section or is unable to use the fiscal year 2001-2002 level of support for federal matching dollars other than for a change in covered benefits or covered population required under the state's medicaid contract with health maintenance organizations, the quality assurance assessment fee under this section shall no longer be assessed or collected.

(f) If a health maintenance organization fails to pay the quality assurance assessment fee required under subsection (1), the department of community health may assess the health maintenance organization a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(g) The medicaid health maintenance organization quality assurance assessment fund is established as a separate fund in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment fee with the state treasurer for deposit in the medicaid health maintenance organization quality assurance assessment fund.

(h) In all fiscal years governed by this section, medicaid reimbursement rates shall not be reduced below the medicaid payment rates in effect on April 1, 2002 as a direct result of the quality assurance assessment fee assessed under this section. This subdivision does not apply to a change in medicaid reimbursement rates caused by a change in covered benefits or change in covered populations required under the state's medicaid contract with health maintenance organizations.

(i) The amounts listed in this subdivision are appropriated for the department of community health, subject to the conditions set forth in this section, for the fiscal year ending September 30, 2003:

MEDICAL SERVICES		
Health plan services	$	1,476,781,100
Gross appropriation	$	1,476,781,100
Appropriated from:		
Federal revenues:		
Total federal revenues		817,495,900
Special revenue funds:		
Medicaid quality assurance assessment		55,747,000
State general fund/general purpose	$	603,538,200

(3) As used in this section:

(a) "Medicaid" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v.

(b) "Medicare" means title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg.

500.2409 Public hearing and report required; condition; basis of report; findings; certification; contested hearing; final report and certification; consideration by commissioner; forwarding reports and certification to governor, clerk of the house, secretary of the senate, and legislative committee members; approval or disapproval of certification by legislature; concurrent resolution; vote.

Sec. 2409. (1) By May 15, 2003 and by May 15 annually thereafter, the commissioner shall make a determination as to whether a reasonable degree of competition in the worker's compensation insurance market exists on a statewide basis. If the commissioner determines that a reasonable degree of competition in the worker's compensation insurance market does not exist on a statewide basis, the commissioner shall hold a public hearing and shall issue a report delineating specific classifications and kinds or types of insurance, if any, where competition does not exist. The report shall be based on relevant economic tests, including but not limited to those in subsection (3). The findings in the report shall not be based on any single measure of competition, but appropriate weight shall be given to all measures of competition. Any person who disagrees with the report and findings of the commissioner may request a contested hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, not later than 60 days after issuance of the report under this subsection.

(2) If the results of the report issued under subsection (1) are disputed or if the commissioner determines that circumstances that the report was based on have changed, the commissioner shall issue a supplemental report to the report under subsection (1) which shall include a certification of whether or not a reasonable degree of competition exists in the worker's compensation insurance market. The supplemental report and certification shall be issued not later than November 15 immediately following the release of the report under subsection (1) that this report supplements and shall be supported by substantial evidence.

(3) All of the following shall be considered by the commissioner for purposes of subsections (1) and (2):

(a) The extent to which any insurer controls all or a portion of the worker's compensation insurance market. In making a determination under this subdivision, the commissioner shall use all insurers in this state, including self-insurers, group self-insurers as provided

in chapter 65, and insurers writing risks under the placement facility created in chapter 23 as a base for calculating market share.

(b) Whether the total number of companies writing worker's compensation insurance in this state is sufficient to provide multiple options to employers.

(c) The disparity among worker's compensation insurance rates and classifications to the extent that such classifications result in rate differentials.

(d) The availability of worker's compensation insurance to employers in all geographic areas and all types of business.

(e) The residual market share.

(f) The overall rate level which is not excessive, inadequate, or unfairly discriminatory.

(g) Any other factors the commissioner considers relevant.

(4) The reports and certifications required under subsections (1) and (2) shall be forwarded to the governor, the clerk of the house, the secretary of the senate, all the members of the house of representatives standing committees on insurance and labor issues, and all the members of the senate standing committees on commerce and labor issues.

(5) Not later than 90 days after receipt of the final report and final certification, the legislature, by concurrent resolution, shall approve or disapprove the certification by a majority roll-call vote in each house. If the certification is approved, the commissioner shall proceed under section 2409a.

500.2409a Worker's compensation insurance market; plan to create competition or availability; methods; powers of commissioner.

Sec. 2409a. If the commissioner certifies and the legislature resolves pursuant to section 2409 that a reasonable degree of competition does not exist with respect to the worker's compensation insurance market on a statewide basis or any geographic areas, classifications, kinds or types of risk, or that insurance is unavailable to a segment of the market who are, in good faith, entitled to obtain insurance through ordinary means, the commissioner shall create competition or availability where it does not exist. A plan for competition or availability adopted pursuant to this section shall be included in a report or supplemental report under section 2409. The plan shall only relate to those geographic areas, classifications, or kinds or types of risks where competition has been certified not to exist. The plan may include methods designed to create competition or availability as the commissioner considers necessary, and may provide for the commissioner to do 1 or more of the following:

(a) Authorize, by order, joint underwriting activities in a manner specified in the commissioner's order.

(b) Modify the rate approval process in a manner to increase competition or availability while at the same time providing for reasonably timely rate approvals, including prior approval or file and use processes.

(c) Order excess profits regulation. Excess profits regulation authorized by this subdivision shall be based upon rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Excess profits shall include both underwriting profits and all after-tax investment or investment profit or loss from unearned premiums and loss reserves attributable to worker's compensation insurance. The commissioner, pursuant to excess profits regulation, may establish forms for the reporting of financial data of an insurer.

(d) Establish and require worker's compensation insurance rates, by order, which insurers must use as a condition of maintaining their certificate of authority. The order setting the rates shall take effect not less than 90 days nor more than 150 days after the order is issued.

500.2409c Public hearing; issuance and contents of tentative report; request for contested hearing; final report and certification; considerations.

Sec. 2409c. (1) By May 15, 2003 and by May 15 annually thereafter, the commissioner shall make an annual determination as to whether a reasonable degree of competition in the commercial liability insurance market exists on a statewide basis. If the commissioner determines that a reasonable degree of competition in the commercial liability insurance market does not exist on a statewide basis, the commissioner shall hold a public hearing and shall issue a report delineating specific classifications and kinds or types of insurance, if any, where a reasonable degree of competition does not exist. The report shall be based on relevant economic tests, including, but not limited to, those in subsection (3). The findings in the report shall not be based on any single measure of competition, but appropriate weight shall be given to all measures of competition. Any person who disagrees with the report and findings of the commissioner may request a contested hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, not later than 60 days after issuance of the report under this subsection.

(2) If the results of the report issued under subsection (1) are disputed or if the commissioner determines that circumstances that the report was based on have changed, the commissioner shall issue a supplemental report to the report under subsection (1) which shall include a certification of whether or not a reasonable degree of competition exists in the commercial liability insurance market. The supplemental report and certification shall be issued not later than November 15 immediately following the release of the report under subsection (1) that this report supplements and shall be supported by substantial evidence.

(3) All of the following shall be considered by the commissioner for purposes of subsections (1) and (2):

(a) The extent to which any insurer controls the commercial liability insurance market, or any portion of the commercial liability insurance market.

(b) Whether the total number of companies writing commercial liability insurance in this state is sufficient to provide multiple options to commercial liability insurance purchasers.

(c) The disparity among commercial liability insurance rates and classifications to the extent that such classifications result in rate differentials.

(d) The availability of commercial liability insurance to commercial liability insurance purchasers in all geographic areas and all types of business.

(e) The residual market share.

500.3515 Additional health maintenance services; copayments; "preventative health care services" defined; partial payment from government or private person.

Sec. 3515. (1) A health maintenance organization may provide additional health maintenance services or any other related health care service or treatment not required under this chapter.

(2) A health maintenance organization may have health maintenance contracts with deductibles. A health maintenance organization may have health maintenance contracts with copayments that are required for specific health maintenance services. Copayments for services required under section 3501(b), excluding deductibles, shall be nominal, shall not exceed 50% of a health maintenance organization's reimbursement to an affiliated provider for providing the service to an enrollee, and shall not be based on the provider's standard charge for the service. A health maintenance organization shall not require contributions be made to a deductible for preventative health care services. As used in this subsection, "preventative health care services" means services designated to maintain an individual in optimum health and to prevent unnecessary injury, illness, or disability.

(3) A health maintenance organization may accept from governmental agencies and from private persons payments covering any part of the cost of health maintenance contracts.

500.3519 Contract and contract rates; fairness; rate differential; basic health services required.

Sec. 3519. (1) A health maintenance organization contract and the contract's rates, including any deductibles and copayments, between the organization and its subscribers shall be fair, sound, and reasonable in relation to the services provided, and the procedures for offering and terminating contracts shall not be unfairly discriminatory.

(2) A health maintenance organization contract and the contract's rates shall not discriminate on the basis of race, color, creed, national origin, residence within the approved service area of the health maintenance organization, lawful occupation, sex, handicap, or marital status, except that marital status may be used to classify individuals or risks for the purpose of insuring family units. The commissioner may approve a rate differential based on sex, age, residence, disability, marital status, or lawful occupation, if the differential is supported by sound actuarial principles, a reasonable classification system, and is related to the actual and credible loss statistics or reasonably anticipated experience for new coverages.

(3) All health maintenance organization contracts shall include, at a minimum, basic health services.

500.3528 Health maintenance organization; duties.

Sec. 3528. (1) A health maintenance organization shall do all of the following:

(a) Establish written policies and procedures for credentialing verification of all health professionals with whom the health maintenance organization contracts and shall apply these standards consistently.

(b) Verify the credentials of a health professional before entering into a contract with that health professional. The health maintenance organization's medical director or other designated health professional shall have responsibility for, and shall participate in, health professional credentialing verification.

(c) Establish a credentialing verification committee consisting of licensed physicians and other health professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification.

(d) Make available for review by the applying health professional upon written request all application and credentialing verification policies and procedures.

(e) Retain all records and documents relating to a health professional's credentialing verification process for at least 2 years.

(f) Keep confidential all information obtained in the credentialing verification process, except as otherwise provided by law.

(2) A health maintenance organization shall obtain primary verification of at least all of the following information about an applicant to become a health professional with the health maintenance organization:

(a) Current license to practice in this state and history of licensure.

(b) Current level of professional liability coverage, if applicable.

(c) Status of hospital privileges, if applicable.

(3) A health maintenance organization shall obtain, subject to either primary or secondary verification at the health maintenance organization's discretion, all of the following information about an applicant to become an affiliated provider with the health maintenance organization:

(a) The health professional's license history in this and all other states.

(b) The health professional's malpractice history.

(c) The health professional's practice history.

(d) Specialty board certification status, if applicable.

(e) Current drug enforcement agency (DEA) registration certificate, if applicable.

(f) Graduation from medical or other appropriate school.

(g) Completion of postgraduate training, if applicable.

(4) A health maintenance organization shall obtain at least every 3 years primary verification of all of the following for a participating health professional:

(a) Current license to practice in this state.

(b) Current level of professional liability coverage, if applicable.

(c) Status of hospital privileges, if applicable.

(5) A health maintenance organization shall require all participating providers to notify the health maintenance organization of changes in the status of any of the items listed in this section at any time and identify for providers the individual at the health maintenance organization to whom they should report changes in the status of an item listed in this section.

(6) A health maintenance organization shall provide a health professional with the opportunity to review and correct information submitted in support of that health professional's credentialing verification application as follows:

(a) Each health professional who is subject to the credentialing verification process has the right to review all information, including the source of that information, obtained by the health maintenance organization to satisfy the requirements of this section during the health maintenance organization's credentialing process.

(b) A health maintenance organization shall notify a health professional of any information obtained during the health maintenance organization's credentialing verification process that does not meet the health maintenance organization's credentialing verification standards or that varies substantially from the information provided to the health maintenance organization by the health professional, except that the health maintenance organization is not required to reveal the source of information if the information is not obtained to meet the requirements of this section or if disclosure is prohibited by law.

(c) A health professional has the right to correct any erroneous information. A health maintenance organization shall have a formal process by which a health professional may submit supplemental or corrected information to the health maintenance organization's

credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the health professional feels that the health carrier's credentialing verification committee has received information that is incorrect or misleading. Supplemental information is subject to confirmation by the health maintenance organization.

(7) If a health maintenance organization contracts to have another entity perform the credentialing functions required by this section, the commissioner shall hold the health maintenance organization responsible for monitoring the activities of the entity with which it contracts and for ensuring that the requirements of this section are met.

(8) Nothing in this act shall be construed to require a health maintenance organization to select a provider as a participating provider solely because the provider meets the health maintenance organization's credentialing verification standards, or to prevent a health maintenance organization from utilizing separate or additional criteria in selecting the health professionals with whom it contracts.

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 622]

(SB 1500)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," by amending sections 39b and 39e (MCL 208.39b and 208.39e), section 39b as added by 1996 PA 441 and section 39e as added by 2002 PA 531.

The People of the State of Michigan enact:

208.39b Business located and conducted within renaissance zone; allowable tax credit; definitions.

Sec. 39b. (1) Except as provided in subsection (2) and for tax years that begin after December 31, 1996, a taxpayer that is a business located and conducting business activity within a renaissance zone may claim a credit against the tax imposed by this act for the tax year to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, equal to the tax liability attributable to business activity conducted within a renaissance zone in the tax year or, for tax years that begin on or after January 1, 2003, either of the following:

(a) Except as provided in subdivision (b), for a business that first locates and begins conducting business activity within a renaissance zone after November 30, 2002, the lesser of the following:

(*i*) The tax liability attributable to business activity conducted within a renaissance zone in the tax year.

(*ii*) Ten percent of adjusted services performed in a designated renaissance zone.

(b) For a business that is located and conducting business activity within a renaissance zone before December 1, 2002 or a business that before December 1, 2002 has entered into a purchase agreement or lease agreement for real or personal property to be used for business activity within a renaissance zone, the greater of the following:

(*i*) The amount calculated under subdivision (a)(*i*) or (*ii*), whichever is less.

(*ii*) The lesser of the following:

(A) The amount calculated under subdivision (a)(*i*).

(B) The credit allowed under this section for the tax year beginning in 2002 plus 2% of the increase in the amount calculated under subsection (9)(a)(*i*) for the tax year over the amount calculated under subsection (9)(a)(*i*) for the tax year beginning in 2002.

(2) Any portion of the taxpayer's tax liability that is attributable to illegal activity conducted in the renaissance zone shall not be used to calculate a credit under this section.

(3) The credit allowed under this section continues through the tax year in which the renaissance zone designation expires.

(4) The tax liability used to determine the credit under this section is the taxpayer's tax liability before the calculation of credits provided in sections 37c and 38b and after the calculation of all other credits under this act.

(5) The credit allowed under this section shall not exceed the tax liability of the taxpayer for the tax year.

(6) A taxpayer that claims a credit under this section shall not employ, pay a speaker fee to, or provide any remuneration, compensation, or consideration to any person employed by the state, the state administrative board created in 1921 PA 2, MCL 17.1 to 17.3, or the renaissance zone review board created in 1996 PA 376, MCL 125.2681 to 125.2696, whose employment relates or related in any way to the authorization or enforcement of the credit allowed under this section for any year in which the taxpayer claims a credit under this section and for the 3 years after the last year that a credit is claimed.

(7) To be eligible for the credit allowed under this section, an otherwise qualified taxpayer shall file an annual return under this act.

(8) Any portion of the taxpayer's tax liability that is attributable to business activity related to the operation of a casino, and business activity that is associated or affiliated with the operation of a casino including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used to calculate a credit under this section. As used in this subsection, "casino" means a casino regulated by this state pursuant to the Michigan gaming control and revenue act, Initiated Law of 1996, MCL 432.201 to 432.226.

(9) As used in this section:

(a) "Adjusted services performed in a designated renaissance zone" means either of the following:

(*i*) Except as provided in subparagraph (*ii*), the sum of the taxpayer's payroll for services performed in a designated renaissance zone plus an amount equal to the amount added pursuant to section 9(4)(c) for the tax year for property exempt under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, in the tax year or, for new property, in the immediately following tax year.

(*ii*) For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph (*i*) plus the product of the following as related to the taxpayer if greater than zero:

(A) Business income.

(B) The apportionment factor as determined under chapter 3.

(C) The renaissance zone business activity factor.

(b) "New property" means property that has not been subject to, or exempt from, the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and has not been subject to, or exempt from, ad valorem property taxes levied in another state, except that receiving an exemption as inventory property does not disqualify property.

(c) "Renaissance zone" means that term as defined in 1996 PA 376, MCL 125.2681 to 125.2696.

(d) "Payroll" means total salaries and wages before deducting any personal or dependency exemptions.

(e) "Renaissance zone business activity factor" means a fraction, the numerator of which is the ratio of the average value of the taxpayer's property located in a designated renaissance zone to the average value of the taxpayer's property in this state plus the ratio of the taxpayer's payroll for services performed in a designated renaissance zone to all of the taxpayer's payroll in this state and the denominator of which is 2.

(f) "Tax liability attributable to business activity conducted within a renaissance zone" means the taxpayer's tax liability multiplied by the renaissance zone business activity factor.

208.39e Tax credit; certification as eligible taxpayer under Michigan next energy authority act; definitions.

Sec. 39e. (1) A taxpayer may claim a credit against the tax imposed by this act for 1 or more of the following as applicable:

(a) The credit allowed under subsection (2).

(b) The credit allowed under subsection (6).

(2) For tax years that begin after December 31, 2002, a taxpayer that is certified under the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827, as an eligible taxpayer may claim a nonrefundable credit for the tax year equal to the amount determined under subdivision (a) or (b), whichever is less:

(a) The amount by which the taxpayer's tax liability attributable to qualified business activity for the tax year exceeds the taxpayer's baseline tax liability attributable to qualified business activity.

(b) For tax years that begin after December 31, 2002, 10% of the amount by which the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the tax year exceeds the taxpayer's adjusted qualified business activity performed in this state outside of a renaissance zone for the 2001 tax year.

(3) For any tax year in which the eligible taxpayer's tax liability attributable to qualified business activity for the tax year does not exceed the taxpayer's baseline tax liability attributable to qualified business activity, the eligible taxpayer shall not claim the credit allowed under subsection (2).

(4) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall not take the credit allowed under subsection (2) unless the qualified business activity of the group or entities is consolidated.

(5) A taxpayer that claims a credit under subsection (2) shall attach a copy of each of the following as issued pursuant to the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827, to the annual return required under this act for each tax year in which the taxpayer claims the credit allowed under subsection (2):

(a) The proof of certification that the taxpayer is an eligible taxpayer for the tax year.

(b) The proof of certification of the taxpayer's tax liability attributable to qualified business activity for the tax year.

(c) The proof of certification of the taxpayer's baseline tax liability attributable to qualified business activity.

(6) For tax years that begin after December 31, 2002, a taxpayer that is a qualified alternative energy entity may claim a credit for the taxpayer's qualified payroll amount. A taxpayer shall claim the credit under this subsection after all allowable nonrefundable credits under this act.

(7) If the credit allowed under subsection (6) exceeds the tax liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability shall be refunded.

(8) Notwithstanding any other provision of this act and for tax years that begin after December 31, 2002, a person whose apportioned or allocated gross receipts are less than $350,000.00 for the tax year need not file a return or pay the tax as provided under this act.

(9) As used in this section:

(a) "Adjusted qualified business activity performed in this state outside of a renaissance zone" means either of the following:

(*i*) Except as provided in subparagraph (*ii*), the taxpayer's payroll for qualified business activity performed in this state outside of a renaissance zone.

(*ii*) For a partnership, limited liability company, S corporation, or individual, the amount determined under subparagraph (*i*) plus the product of the following as related to the taxpayer:

(A) Business income.

(B) The apportionment factor as determined under chapter 3.

(C) The alternative energy business activity factor.

(b) "Alternative energy business activity factor" means a fraction the numerator of which is the ratio of the value of the taxpayer's property used for qualified business activity and located in this state outside of a renaissance zone for the year for which the factor is being calculated to the value of all of the taxpayer's property located in this state for that year plus the ratio of the taxpayer's payroll for qualified business activity performed in this state outside of a renaissance zone for that year to all of the taxpayer's payroll in this state for that year and the denominator of which is 2.

(c) "Alternative energy marine propulsion system", "alternative energy system", "alternative energy vehicle", and "alternative energy technology" mean those terms as defined in the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

(d) "Alternative energy zone" means a renaissance zone designated as an alternative energy zone by the board of the Michigan strategic fund under section 8a of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688a.

(e) "Baseline tax liability attributable to qualified business activity" means the taxpayer's tax liability for the 2001 tax year multiplied by the taxpayer's alternative energy business activity factor for the 2001 tax year. A taxpayer with a 2001 tax year of less than 12 months shall annualize the amount calculated under this subdivision as necessary to determine baseline tax liability attributable to qualified business activity that reflects a 12-month period.

(f) "Eligible taxpayer" means a taxpayer that has proof of certification of qualified business activity under the Michigan next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

(g) "Payroll" means total salaries and wages before deducting any personal or dependency exemptions.

(h) "Qualified alternative energy entity" means a taxpayer located in an alternative energy zone.

(i) "Qualified business activity" means research, development, or manufacturing of an alternative energy marine propulsion system, an alternative energy system, an alternative energy vehicle, alternative energy technology, or renewable fuel.

(j) "Qualified employee" means an individual who is employed by a qualified alternative energy entity, whose job responsibilities are related to the research, development, or manufacturing activities of the qualified alternative energy entity, and whose regular place of employment is within an alternative energy zone.

(k) "Qualified payroll amount" means an amount equal to payroll of the qualified alternative energy entity attributable to all qualified employees in the tax year of the qualified alternative energy entity for which the credit under subsection (6) is being claimed, multiplied by the tax rate for that tax year.

(*l*) "Renaissance zone" means a renaissance zone designated under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696.

(m) "Renewable fuel" means 1 or more of the following:

(*i*) Biodiesel or biodiesel blends containing at least 20% biodiesel. As used in this subparagraph, "biodiesel" means a diesel fuel substitute consisting of methyl or ethyl esters produced from the transesterification of animal or vegetable fats with methanol or ethanol.

(*ii*) Biomass. As used in this subparagraph, "biomass" means residues from the wood and paper products industries, residues from food production and processing, trees and grasses grown specifically to be used as energy crops, and gaseous fuels produced from solid biomass, animal wastes, municipal waste, or landfills.

(n) "Tax liability attributable to qualified business activity" means the taxpayer's tax liability multiplied by the taxpayer's alternative energy business activity factor for the tax year.

(o) "Tax rate" means the rate imposed under sections 51, 51d, and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51, 206.51d, and 206.51e, annualized as necessary, for the tax year in which the qualified alternative energy entity claims a credit under subsection (6).

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 623]

(SB 1437)

AN ACT to amend 1979 PA 152, entitled "An act to provide for the establishment and collection of fees for the regulation of certain occupations and professions, and for certain agencies and businesses; to create certain funds; and to prescribe certain powers and

duties of certain state agencies and departments," by amending section 37 (MCL 338.2237), as amended by 1988 PA 461.

The People of the State of Michigan enact:

338.2237 Real estate broker, associate broker, salesperson, or branch office; fees; registration of property approved under land sales act; real estate education fund; real estate enforcement fund; creation and use.

Sec. 37. (1) Fees for a person licensed or seeking licensure as a real estate broker, associate broker, salesperson, or branch office or seeking other licenses or approvals issued under article 25 of the occupational code, MCL 339.2501 to 339.2518, are as follows:

(a) Application processing fees:	
(*i*) Brokers and associate brokers	$ 20.00
(*ii*) Salespersons	10.00
(*iii*) Branch office	10.00
(b) License fees, per year:	
(*i*) Brokers and associate brokers	36.00
(*ii*) Salespersons	26.00
(c) Branch office fee, per year	10.00
(d) Sale of out of state property:	
(*i*) Application to sell	20.00
(*ii*) Property registration	500.00
(*iii*) Renewal of approval to sell	20.00

(2) A fee shall not be required for the registration of property approved under the land sales act, 1972 PA 286, MCL 565.801 to 565.835.

(3) The real estate education fund is established in the state treasury and shall be administered by the department. Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited with the state treasurer to the credit of the real estate education fund. The department shall utilize the real estate education fund only for the operation of departmental programs related to education required of all licensees or applicants for licensure under article 25 of the occupational code, MCL 339.2501 to 339.2518. Any unexpended balance in the real estate education fund at the end of a fiscal year shall carry forward to the next fiscal year.

(4) The real estate enforcement fund is created in the state treasury and shall be administered by the department. Beginning the license cycle after the effective date of the amendatory act that added this subsection, $15.00 of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited into the real estate enforcement fund. The department shall utilize the real estate enforcement fund only for the enforcement of article 25 of the occupational code, MCL 339.2501 to 339.2518, regarding unlicensed activity as further described in section 601(1) and (2) and to reimburse the attorney general for expenses incurred in conducting prosecutions of such unlicensed practice. Any unexpended balance in the real estate enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

This act is ordered to take immediate effect.

Approved December 21, 2002.

Filed with Secretary of State December 23, 2002.

[No. 624]

(HB 5743)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," by amending sections 7cc and 53b (MCL 211.7cc and 211.53b), section 7cc as amended by 1996 PA 476 and section 53b as amended by 2000 PA 284.

The People of the State of Michigan enact:

211.7cc Homestead exemption from tax levied by local school district for school operating purposes; procedures.

Sec. 7cc. (1) A homestead is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that homestead claims an exemption as provided in this section. Notwithstanding the tax day provided in section 2, the status of property as a homestead shall be determined on the date an affidavit claiming an exemption is filed under subsection (2).

(2) An owner of property may claim an exemption under this section by filing an affidavit on or before May 1 with the local tax collecting unit in which the property is located. The affidavit shall state that the property is owned and occupied as a homestead by that owner of the property on the date that the affidavit is signed. The affidavit shall be on a form prescribed by the department of treasury. Beginning in 1995, 1 copy of the affidavit shall be retained by the owner, 1 copy shall be retained by the local tax collecting unit until any appeal or audit period under this act has expired, and 1 copy shall be forwarded to the department of treasury pursuant to subsection (4), together with all information submitted under subsection (18) for a cooperative housing corporation. Beginning in 1995, the affidavit shall require the owner claiming the exemption to indicate if that owner has claimed another exemption on property in this state that is not rescinded. If the affidavit requires an owner to include a social security number, that owner's number is subject to the disclosure restrictions in 1941 PA 122, MCL 205.1 to 205.31.

(3) A husband and wife who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 homestead exemption.

(4) Upon receipt of an affidavit filed under subsection (2) and unless the claim is denied under subsection (6), the assessor shall exempt the property from the collection of the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, as provided in subsection (1) until December 31 of the year in which the property is transferred or is no longer a homestead as defined in section 7dd. The local tax collecting unit shall forward

copies of affidavits to the department of treasury according to a schedule prescribed by the department of treasury.

(5) Not more than 90 days after exempted property is no longer used as a homestead by the owner claiming an exemption, that owner shall rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the department of treasury. Beginning October 1, 1994, an owner who fails to file a rescission as required by this subsection is subject to a penalty of $5.00 per day for each separate failure beginning after the 90 days have elapsed, up to a maximum of $200.00. This penalty shall be collected under 1941 PA 122, MCL 205.1 to 205.31, and shall be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963. This penalty may be waived by the department of treasury.

(6) If the assessor of the local tax collecting unit believes that the property for which an exemption is claimed is not the homestead of the owner claiming the exemption, effective for taxes levied after 1994 the assessor may deny a new or existing claim by notifying the owner and the department of treasury in writing of the reason for the denial and advising the owner that the denial may be appealed to the department of treasury within 35 days after the date of the notice. The denial shall be made on a form prescribed by the department of treasury. If the assessor of the local tax collecting unit believes that the property for which the exemption is claimed is not the homestead of the owner claiming the exemption, for taxes levied in 1994 the assessor may send a recommendation for denial for any affidavit that is forwarded to the department of treasury stating the reasons for the recommendation. If the assessor of the local tax collecting unit believes that the property for which the exemption is claimed is not the homestead of the owner claiming the exemption and has not denied the claim, for taxes levied after 1994 the assessor shall include a recommendation for denial with any affidavit that is forwarded to the department of treasury or, for an existing claim, shall send a recommendation for denial to the department of treasury, stating the reasons for the recommendation.

(7) The department of treasury shall determine if the property is the homestead of the owner claiming the exemption. The department of treasury may review the validity of exemptions for the current calendar year and for the 3 immediately preceding calendar years. If the department of treasury determines that the property is not the homestead of the owner claiming the exemption, the department shall send a notice of that determination to the local tax collecting unit and to the owner of the property claiming the exemption, indicating that the claim for exemption is denied, stating the reason for the denial, and advising the owner claiming the exemption of the right to appeal the determination to the department of treasury and what those rights of appeal are. The department of treasury may issue a notice denying a claim if an owner fails to respond within 30 days of receipt of a request for information from that department. An owner may appeal the denial of a claim of exemption to the department of treasury within 35 days of receipt of the notice of denial. An appeal to the department of treasury shall be conducted according to the provisions for an informal conference in section 21 of 1941 PA 122, MCL 205.21. Within 10 days after acknowledging an appeal of a denial of a claim of exemption, the department of treasury shall notify the assessor and the treasurer for the county in which the property is located that an appeal has been filed. Upon receipt of a notice that the department of treasury has denied a claim for exemption, the assessor shall remove the exemption of the property and, if the tax roll is in the local tax collecting unit's possession, amend the tax roll to reflect the denial and the local treasurer shall issue a corrected tax bill for previously unpaid taxes with interest and penalties computed based on the interest and penalties that would have accrued from the date the taxes were originally levied if there had not been an exemption. If the tax roll is in the county

treasurer's possession, the tax roll shall be amended to reflect the denial and the county treasurer shall prepare and submit a supplemental tax bill for any additional taxes, together with any interest and penalties. For taxes levied in 1994 only, the county treasurer shall waive any interest and penalties due if the owner pays the supplemental tax bill not more than 30 days after the owner receives the supplemental tax bill. Interest and penalties shall not be assessed for any period before February 14, 1995. However, if the property has been transferred to a bona fide purchaser before additional taxes were billed to the seller as a result of the denial of a claim for exemption, the taxes, interest, and penalties shall not be billed to the bona fide purchaser, and the local tax collecting unit if the local tax collecting unit has possession of the tax roll or the county treasurer if the county has possession of the tax roll shall notify the department of treasury of the amount of tax due and interest through the date of that notification. The department of treasury shall then assess the owner who claimed the homestead property tax exemption for the tax and interest plus penalty accruing as a result of the denial of the claim for exemption, if any, as for unpaid taxes provided under 1941 PA 122, MCL 205.1 to 205.31, and shall deposit any tax, interest, or penalty collected into the state school aid fund.

(8) An owner may appeal a final decision of the department of treasury to the residential and small claims division of the Michigan tax tribunal within 35 days of that decision. An assessor may appeal a final decision of the department of treasury to the residential and small claims division of the Michigan tax tribunal within 35 days of that decision if the assessor denied the exemption under subsection (6), or, for taxes levied in 1994 only, the assessor forwarded a recommendation for denial to the department of treasury under subsection (6). An owner is not required to pay the amount of tax in dispute in order to appeal a denial of a claim of exemption to the department of treasury or to receive a final determination of the residential and small claims division of the Michigan tax tribunal. However, interest and penalties except as provided in subsection (7), if any, shall accrue and be computed based on the interest and penalties that would have accrued from the date the taxes were originally levied as if there had not been an exemption.

(9) An affidavit filed by an owner for a homestead rescinds all previous exemptions filed by that owner for any other homestead. The department of treasury shall notify the assessor of the local tax collecting unit in which the property for which a previous exemption was claimed is located that the previous exemption is rescinded by the subsequent affidavit. Upon receipt of notice that an exemption is rescinded, the assessor of the local tax collecting unit shall remove the exemption effective December 31 of the year in which the property is transferred or is no longer a homestead as defined in section 7dd. The assessor of the local tax collecting unit in which that property is located shall notify the treasurer in possession of the tax roll for a year for which the exemption is rescinded. If the tax roll is in the local tax collecting unit's possession, the tax roll shall be amended to reflect the rescission and the local treasurer shall prepare and issue a corrected tax bill for previously unpaid taxes with interest and penalties computed based on the interest and penalties that would have accrued from the date the taxes were originally levied if there had not been an exemption for that year. If the tax roll is in the county treasurer's possession, the tax roll shall be amended to reflect the rescission and the county treasurer shall prepare and submit a supplemental tax bill for any additional taxes, together with any interest and penalties. However, if the property has been transferred to a bona fide purchaser, the taxes, interest, and penalties shall not be billed to the bona fide purchaser, and the local tax collecting unit if the local tax collecting unit has possession of the tax roll or the county treasurer if the county has possession of the tax roll shall notify the department of treasury of the amount of tax due and interest through the date of that notification. The department of treasury shall then assess the

owner who received the homestead property tax exemption when the property was not a homestead as defined in section 7dd for the tax and interest plus penalty accruing, if any, as for unpaid taxes provided under 1941 PA 122, MCL 205.1 to 205.31, and shall deposit any tax, interest, or penalty collected into the state school aid fund.

(10) An owner of property for which a claim of exemption is rescinded may appeal that rescission with either the July or December board of review in either the year for which the exemption is rescinded or in the immediately succeeding year. If an appeal of a rescission of a claim for exemption is received not later than 5 days prior to the date of the December board of review, the local tax collecting unit shall convene a December board of review and consider the appeal pursuant to this section and section 53b. An owner of property for which a claim of exemption is rescinded may appeal the decision of the board of review to the residential and small claims division of the Michigan tax tribunal within 35 days of that decision.

(11) If the homestead is part of a unit in a multiple-unit dwelling or a dwelling unit in a multiple-purpose structure, an owner shall claim an exemption for only that portion of the total taxable value of the property used as the homestead of that owner in a manner prescribed by the department of treasury. If a portion of a parcel for which the owner claims an exemption is used for a purpose other than as a homestead, the owner shall claim an exemption for only that portion of the taxable value of the property used as the homestead of that owner in a manner prescribed by the department of treasury.

(12) When a county register of deeds records a transfer of ownership of a property, he or she shall notify the local tax collecting unit in which the property is located of the transfer.

(13) The department of treasury shall make available the affidavit forms and the forms to rescind an exemption, which may be on the same form, to all city and township assessors, county equalization officers, county registers of deeds, and closing agents. A person who prepares a closing statement for the sale of property shall provide affidavit and rescission forms to the buyer and seller at the closing and, if requested by the buyer or seller after execution by the buyer or seller, shall file the forms with the local tax collecting unit in which the property is located. If a closing statement preparer fails to provide homestead exemption affidavit and rescission forms to the buyer and seller, or fails to file the affidavit and rescission forms with the local tax collecting unit if requested by the buyer or seller, the buyer may appeal to the department of treasury within 30 days of notice to the buyer that an exemption was not recorded. If the department of treasury determines that the buyer qualifies for the exemption, the department of treasury shall notify the assessor of the local tax collecting unit that the exemption is granted and the assessor of the local tax collecting unit or, if the tax roll is in the possession of the county treasurer, the county treasurer shall correct the tax roll to reflect the exemption. This subsection does not create a cause of action at law or in equity against a closing statement preparer who fails to provide homestead exemption affidavit and rescission forms to a buyer and seller or who fails to file the affidavit and rescission forms with the local tax collecting unit when requested to do so by the buyer or seller.

(14) An owner who owned and occupied a homestead on May 1 for which the exemption was not on the tax roll may file an appeal with the July board of review or December board of review in the year for which the exemption was claimed or the immediately succeeding 3 years. If an appeal of a claim for exemption that was not on the tax roll is received not later than 5 days prior to the date of the December board of review, the local tax collecting unit shall convene a December board of review and consider the appeal pursuant to this section and section 53b.

(15) If the assessor or treasurer of the local tax collecting unit believes that the department of treasury erroneously denied a claim for exemption, the assessor or treasurer may submit written information supporting the owner's claim for exemption to the department of treasury within 35 days of the owner's receipt of the notice denying the claim for exemption. If, after reviewing the information provided, the department of treasury determines that the claim for exemption was erroneously denied, the department of treasury shall grant the exemption and the tax roll shall be amended to reflect the exemption.

(16) If granting the exemption under this section results in an overpayment of the tax, a rebate, including any interest paid, shall be made to the taxpayer by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll within 30 days of the date the exemption is granted. The rebate shall be without interest.

(17) If an exemption under this section is erroneously granted, an owner may request in writing that the department of treasury withdraw the exemption. If an owner requests that an exemption be withdrawn, the department of treasury shall issue an order notifying the local assessor that the exemption issued under this section has been denied based on the owner's request. If an exemption is withdrawn, the property that had been subject to that exemption shall be immediately placed on the tax roll by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll as though the exemption had not been granted. A corrected tax bill shall be issued for the tax year being adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. If an owner requests that an exemption under this section be withdrawn before that owner is contacted in writing by either the local assessor or the department of treasury regarding that owner's eligibility for the exemption and that owner pays the corrected tax bill issued under this subsection within 30 days after the corrected tax bill is issued, that owner is not liable for any penalty or interest on the additional tax. An owner who pays a corrected tax bill issued under this subsection more than 30 days after the corrected tax bill is issued is liable for the penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

(18) For tax years beginning on and after January 1, 1994, a cooperative housing corporation is entitled to a full or partial exemption under this section for the tax year in which the cooperative housing corporation files all of the following with the local tax collecting unit in which the cooperative housing corporation is located if filed on or before May 1 of the tax year, or for the tax year following the year in which all of the following are filed if filed after May 1 of the tax year:

(a) An affidavit form.

(b) A statement of the total number of units owned by the cooperative housing corporation and occupied as the principal residence of a tenant stockholder as of the date of the filing under this subsection.

(c) A list that includes the name, address, and social security number of each tenant stockholder of the cooperative housing corporation occupying a unit in the cooperative housing corporation as his or her principal residence as of the date of the filing under this subsection.

(d) A statement of the total number of units of the cooperative housing corporation on which an exemption under this section was claimed and that were transferred in the tax year immediately preceding the tax year in which the filing under this section was made.

211.53b Clerical error or mutual mistake of fact as to assessment figures, rate of taxation, or mathematical computation; verification, approval, and affidavit; correction of records; rebate; notice and payment; initiation of action; actions of board of review; exemption; appeal.

Sec. 53b. (1) If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error or mutual mistake of fact shall be verified by the local assessing officer and approved by the board of review at a meeting held for the purposes of this section on Tuesday following the second Monday in December and, for summer property taxes, on Tuesday following the third Monday in July. If there is not a levy of summer property taxes, the board of review may meet for the purposes of this section on Tuesday following the third Monday in July. If approved, the board of review shall file an affidavit within 30 days relative to the clerical error or mutual mistake of fact with the proper officials who are involved with the assessment figures, rate of taxation, or mathematical computation and all affected official records shall be corrected. If the clerical error or mutual mistake of fact results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A rebate shall be without interest. The county treasurer may deduct the rebate from the appropriate tax collecting unit's subsequent distribution of taxes. The county treasurer shall bill to the appropriate tax collecting unit the tax collecting unit's share of taxes rebated. Except as otherwise provided in subsection (6), a correction under this subsection may be made in the year in which the error was made or in the following year only.

(2) Action pursuant to this section may be initiated by the taxpayer or the assessing officer.

(3) The board of review meeting in July and December shall meet only for the purpose described in subsection (1) and to hear appeals provided for in sections 7u, 7cc, and 7ee. If an exemption under section 7u is approved, the board of review shall file an affidavit with the proper officials involved in the assessment and collection of taxes and all affected official records shall be corrected. If an appeal under section 7cc or 7ee results in a determination that an overpayment has been made, the board of review shall file an affidavit and a rebate shall be made at the times and in the manner provided in subsection (1). Except as otherwise provided in sections 7cc and 7ee, a correction under this subsection shall be made for the year in which the appeal is made only. If the board of review grants an exemption or provides a rebate for property under section 7cc or 7ee as provided in this subsection, the board of review shall require the owner to execute the affidavit provided for in section 7cc or 7ee and shall forward a copy of any section 7cc affidavits to the department of treasury.

(4) If an exemption under section 7cc is granted by the board of review under this section, the provisions of section 7cc(6) through (8) apply. If an exemption under section 7cc is not granted by the board of review under this section, the owner may appeal that decision in writing to the department of treasury within 35 days of the board of review's denial and the appeal shall be conducted as provided in section 7cc(7).

(5) An owner or assessor may appeal a decision of the board of review under this section regarding an exemption under section 7ee to the residential and small claims division of the Michigan tax tribunal. An owner is not required to pay the amount of tax in dispute in order to receive a final determination of the residential and small claims division of the Michigan tax tribunal. However, interest and penalties, if any, shall accrue

and be computed based on interest and penalties that would have accrued from the date the taxes were originally levied as if there had not been an exemption.

(6) A correction under this section that grants a homestead exemption pursuant to section 7cc(14) may be made for the year in which the appeal was filed and the 3 immediately preceding tax years.

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 625]

(SB 1447)

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties," by amending section 17b of chapter XIIA (MCL 712A.17b), as amended by 1998 PA 325.

The People of the State of Michigan enact:

CHAPTER XIIA

712A.17b Definitions; proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; shielding of witness; videorecorded deposition; special arrangements to protect welfare of witness; section additional to other protections or procedures.

Sec. 17b. (1) As used in this section:

(a) "Custodian of the videorecorded statement" means the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(b) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(c) "Videorecorded statement" means a witness's statement taken by a custodian of the videorecorded statement as provided in subsection (5). Videorecorded statement does not include a videorecorded deposition taken as provided in subsections (16) and (17).

(d) "Witness" means an alleged victim of an offense listed under subsection (2) who is either of the following:

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(2) This section only applies to either of the following:

(a) A proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328.

(b) A proceeding brought under section 2(b) of this chapter.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be filed with the court and shall be served upon all parties to the proceeding. The court shall rule on a motion objecting to the use of a named support person before the date at which the witness desires to use the support person.

(5) A custodian of the videorecorded statement may take a witness's videorecorded statement. The videorecorded statement shall be admitted at all proceedings except the adjudication stage instead of the live testimony of the witness. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the statement.

(6) In a videorecorded statement, the questioning of the witness should be full and complete; shall be in accordance with the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628; and, if appropriate for the witness's developmental level, shall include, but need not be limited to, all of the following areas:

(a) The time and date of the alleged offense or offenses.

(b) The location and area of the alleged offense or offenses.

(c) The relationship, if any, between the witness and the respondent.

(d) The details of the offense or offenses.

(e) The names of other persons known to the witness who may have personal knowledge of the offense or offenses.

(7) A custodian of the videorecorded statement may release or consent to the release or use of a videorecorded statement or copies of a videorecorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the

videorecorded statement relates, or an entity that is part of county protocols established under section 8 of the child protection law, 1975 PA 238, MCL 722.628. Each respondent and, if represented, his or her attorney has the right to view and hear the videorecorded statement at a reasonable time before it is offered into evidence. In preparation for a court proceeding and under protective conditions, including, but not limited to, a prohibition on the copying, release, display, or circulation of the videorecorded statement, the court may order that a copy of the videorecorded statement be given to the defense.

(8) If authorized by the prosecuting attorney in the county in which the videorecorded statement was taken, a videorecorded statement may be used for purposes of training the custodians of the videorecorded statement in that county on the forensic interview protocol implemented as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(9) Except as provided in this section, an individual, including, but not limited to, a custodian of the videorecorded statement, the witness, or the witness's parent, guardian, guardian ad litem, or attorney, shall not release or consent to release a videorecorded statement or a copy of a videorecorded statement.

(10) A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(11) A videorecorded statement shall not be copied or reproduced in any manner except as provided in this section. A videorecorded statement is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to release under another statute, and is not subject to disclosure under the Michigan court rules governing discovery. This section does not prohibit the production or release of a transcript of a videorecorded statement.

(12) Except as otherwise provided in subsection (15), if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify in the presence of the respondent at a court proceeding or in a videorecorded deposition taken as provided in subsection (13), the court shall order that the witness during his or her testimony be shielded from viewing the respondent in such a manner as to enable the respondent to consult with his or her attorney and to see and hear the testimony of the witness without the witness being able to see the respondent.

(13) In a proceeding brought under section 2(b) of this chapter, if, upon the motion of a party or in the court's discretion, the court finds on the record that psychological harm to the witness would occur if the witness were to testify at the adjudication stage, the court shall order to be taken a videorecorded deposition of a witness that shall be admitted into evidence at the adjudication stage instead of the live testimony of the witness. The examination and cross-examination of the witness in the videorecorded deposition shall proceed in the same manner as permitted at the adjudication stage.

(14) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party made before the adjudication stage, the court finds on the record that the special arrangements specified in subsection (15) are necessary to protect the welfare of the witness, the court shall order 1 or both of those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider both of the following:

(a) The age of the witness.

(b) The nature of the offense or offenses.

(15) If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (14), the court shall order 1 or both of the following:

(a) In order to protect the witness from directly viewing the respondent, the courtroom shall be arranged so that the respondent is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The respondent's position shall be located so as to allow the respondent to hear and see all witnesses and be able to communicate with his or her attorney.

(b) A questioner's stand or podium shall be used for all questioning of all witnesses by all parties, and shall be located in front of the witness stand.

(16) In a proceeding brought under section 2(a)(1) of this chapter in which the alleged offense, if committed by an adult, would be a felony under section 136b, 145c, 520b to 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g, or under former section 136 or 136a of the Michigan penal code, 1931 PA 328, if, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), and (15), the court shall order that a videorecorded deposition of a witness shall be taken to be admitted at the adjudication stage instead of the witness's live testimony.

(17) For purposes of the videorecorded deposition under subsection (16), the witness's examination and cross-examination shall proceed in the same manner as if the witness testified at the adjudication stage, and the court shall order that the witness, during his or her testimony, shall not be confronted by the respondent but shall permit the respondent to hear the testimony of the witness and to consult with his or her attorney.

(18) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

(19) A person who intentionally releases a videorecorded statement in violation of this section 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.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1356 of the 91st Legislature is enacted into law.

Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

Compiler's note: Senate Bill No. 1356, referred to in enacting section 1, was filed with the Secretary of State December 20, 2002, and became P.A. 2002, No. 604, Eff. Mar. 31, 2003.

[No. 626]

(SB 1410)

AN ACT to amend 1969 PA 317, entitled "An act to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of

the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," by amending section 625 (MCL 418.625), as amended by 1995 PA 271.

The People of the State of Michigan enact:

418.625 Insurance policy's notice of issuance; contents; refusal to accept coverage.

Sec. 625. Each insurer mentioned in section 611 issuing an insurance policy covering worker's compensation in this state shall file with the director, within 30 days after the effective date of the policy, a notice of the issuance of the policy and its effective date. A notice of issuance of insurance, a notice of termination of insurance, or a notice of employer name change may be submitted in writing or by using bureau approved electronic record layout and transaction standards and may be submitted by the insurer directly or by the compensation advisory organization of Michigan on behalf of the insurer. Payment shall not be required by the bureau or any third party for the use of bureau approved electronic record layout and transaction standards under this act. Time requirements for notices under this act apply whether filed by the insurer or the compensation advisory organization of Michigan. If the policy covers persons who would otherwise be exempted from this act by section 115, the notice shall contain a specific statement to that effect. A notice shall not be required of any insurer where the policy issued is a renewal of the preceding policy. The insurer, if it refuses to accept any coverage under this act, shall do so in writing.

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 627]

(SB 670)

AN ACT to amend 1937 PA 306, entitled "An act to promote the safety, welfare and educational interests of the people of the state of Michigan by regulating the construction, reconstruction and remodeling of certain public or private school buildings or additions thereto, by regulating the construction, reconstruction and remodeling of buildings leased or acquired for school purposes, and to define the class of buildings affected by this act; to prescribe the powers and duties of the superintendent of public instruction, the state fire marshal, architects, engineers and school board members with respect thereto; to prescribe penalties for the violation of this act; and to repeal all acts and parts of acts, general, local and special, inconsistent with or contrary to the provisions of this act," by amending section 2 (MCL 388.852).

The People of the State of Michigan enact:

388.852 School building; architect or engineer; responsibilities; violation; penalty.

Sec. 2. (1) The licensed architect or engineer preparing the plans and specifications of a school building is responsible for assuring that the design documents provide for a structure with sufficient structural strength and fire resistance and that the building will meet all applicable codes, standards, and regulations.

(2) The person supervising the construction of a school building is responsible for the construction of the school building in conformance with the approved plans and specifications prepared by the licensed architect or engineer.

(3) A person that violates this section is subject to all of the following:

(a) A state civil infraction punishable by a civil fine of not more than $10,000.00.

(b) If the person knowingly violated this section, a misdemeanor punishable by a fine of not more than $10,000.00 or imprisonment for not more than 180 days, or both.

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 628]

(SB 358)

AN ACT to amend 1937 PA 306, entitled "An act to promote the safety, welfare and educational interests of the people of the state of Michigan by regulating the construction, reconstruction and remodeling of certain public or private school buildings or additions thereto, by regulating the construction, reconstruction and remodeling of buildings leased or acquired for school purposes, and to define the class of buildings affected by this act; to prescribe the powers and duties of the superintendent of public instruction, the state fire marshal, architects, engineers and school board members with respect thereto; to prescribe penalties for the violation of this act; and to repeal all acts and parts of acts, general, local and special, inconsistent with or contrary to the provisions of this act," by amending the title and section 1 (MCL 388.851) and by adding section 1b.

The People of the State of Michigan enact:

TITLE

An act to promote the safety, welfare, and educational interests of the people of the state of Michigan by regulating the construction, reconstruction, and remodeling of certain public or private school buildings or additions to such buildings, by regulating the construction, reconstruction, and remodeling of buildings leased or acquired for school purposes, and to define the class of buildings affected by this act; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

388.851 School buildings; construction requirements; waiver.

Sec. 1. A school building, public or private, or any additions to a school building, shall not be erected, remodeled, or reconstructed in this state except in conformity with all of the following provisions:

(a) All plans and specifications for buildings shall be prepared by an architect or professional engineer who is licensed in this state. An architect or professional engineer licensed in this state or another person qualified to supervise construction shall supervise the construction of a school building.

(b) All walls, floors, partitions, and roofs shall be constructed of fire-resisting materials such as stone, brick, tile, concrete, gypsum, steel, or similar fire-resisting material. All steel members shall be protected by at least 3/4 of an inch of fire-resisting material.

(c) Wood lath or wood furring shall not be used in the construction. These regulations shall not be construed as prohibiting the use of finished wood flooring, wood door and window frames, wood sash, or wood furring and grounds, for the purpose of installing wood trim, panelling, acoustical units, or similar facing materials on masonry walls, structural steel, or concrete ceiling members.

(d) Every room enclosing a heating unit shall be enclosed by walls of fire-resisting materials and shall be equipped with automatically closing fire doors. All heating units shall not be located directly beneath any portion of a school building or addition that is constructed or reconstructed after January 1, 2003. This regulation shall not be construed to require the removal of an existing heating plant from beneath an existing building when an addition to the building is constructed unless the department requires such removal in the interests of the public safety. In any school where natural gas or any other kind of gas is used for heating purposes, the gas shall be chemically treated before being used in such a manner as to give a very distinguishable odor if any leak should develop in the heating system.

(e) In gymnasiums, fire-proofings may be omitted from the trusses and purlins if they are more than 16 feet off the main floor level.

(f) The architect or engineer shall provide adequate exits from all parts of school buildings. In all cases, there shall be at least 2 stairways and the distance from the door of any class or assembly room to a stairway or exit shall not exceed 100 feet.

(g) Provisions in subdivisions (b) to (f) may be waived in writing by the department.

(h) Compliance with section 1b.

388.851b School buildings; administration and enforcement of act; inspection; methods; plan reviews; delegation of responsibilities; approval under fire prevention code; scope of act; definitions.

Sec. 1b. (1) Except as provided in subsection (5), the department is responsible for the administration and enforcement of this act and the Stille-DeRossett-Hale single state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531, in each school building in this state.

(2) Except as provided in subsection (5), a school building covered by bond issues that were approved by the department of treasury after July 1, 2003 shall not be constructed, remodeled, or reconstructed in this state until written approval of the plans and specifications is obtained from the department indicating that the school building will be designed and constructed in conformance with the code. This subsection does not apply to any school building for which construction is covered by bond issues that were approved by the department of treasury before July 1, 2003.

(3) Responsibility for inspections of school buildings shall be determined by 1 of the following methods:

(a) By an independent third party designated in the contract governing the construction, remodeling, or reconstruction of a school building. The independent third party shall be responsible for all inspections required to insure compliance with the code. The school authority shall verify that the independent third party named is knowledgeable about construction practices and codes and is otherwise qualified to conduct the inspections. The name of the independent third party to be responsible for conducting inspections shall be submitted to the department with the plans and specifications required by subsection (2). If the department determines that the independent third party is not qualified to conduct the inspections or is not an independent third party, it shall disapprove of the designation and notify the school authority. All inspection reports prepared by the person designated by the school authority under this subdivision shall be sent to the department upon completion of the inspection. The department may return the report for further work if there are questions relating to the scope of the inspection or whether the construction, remodeling, or reconstruction meets the requirements of the code.

(b) If a designation of an independent third party is not made as required under subdivision (a), the inspections required to insure compliance with the code will be performed by the department or as provided under subsection (5).

(4) Except as provided in subsection (5), the department shall perform for school buildings all plan reviews within 60 days from the date the plans are filed or considered approved and inspections within 5 business days as required by the code and shall be the enforcing agency for this act.

(5) The department shall delegate the responsibility for the administration and enforcement of this act to the applicable agency if both the school board and the governing body of the governmental subdivision have annually certified to the department, in a manner prescribed by the department, that full-time code officials, inspectors, and plan reviewers registered under the building officials and inspectors registration act, 1986 PA 54, MCL 338.2301 to 338.2313, will conduct plan reviews and inspections of school buildings.

(6) This section does not affect the responsibilities of the department under the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34. The bureau of construction codes and the office of fire safety in the department shall jointly develop procedures to use the plans and specifications submitted in carrying out the requirements of this act and the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34. A certificate of occupancy shall not be issued by the appropriate code enforcement agency until a certificate of approval has been issued under the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34.

(7) This section applies to construction, remodeling, or reconstruction of school buildings that are covered by bond issues that were approved by the department of treasury after July 1, 2003. Construction, remodeling, or reconstruction of school buildings that are covered by bond issues approved before July 1, 2003 shall submit the plans and specifications to the department for approval under section 1. The department shall not grant approval until it has received the certification described in section 3 relative to fire safety and from the appropriate health department relative to water supply, sanitation, and food handling.

(8) As used in this section:

(a) "Code" means the state construction code provided for in the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(b) "Construction" shall have the same meaning as that term is defined under section 2a of the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1502a.

(c) "Department" means the department of consumer and industry services.

This act is ordered to take immediate effect.
Approved December 21, 2002.
Filed with Secretary of State December 23, 2002.

[No. 629]

(HB 5296)

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 145c (MCL 750.145c), as amended by 1994 PA 444.

The People of the State of Michigan enact:

750.145c Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited.

Sec. 145c. (1) As used in this section:

(a) "Appears to include a child" means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

(*i*) It was created using a depiction of any part of an actual person under the age of 18.

(*ii*) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:

(A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.

(B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(C) The depiction depicts or describes a listed sexual act in a patently offensive way.

(b) "Child" means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.

(c) "Commercial film or photographic print processor" means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.

(d) "Contemporary community standards" means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(e) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing

or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(f) "Erotic nudity" means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, "lascivious" means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(g) "Listed sexual act" means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(h) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(i) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(j) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion.

(k) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(*l*) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(m) "Sadomasochistic abuse" means either of the following:

(*i*) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(*ii*) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(n) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(o) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony,

punishable by imprisonment for not more than 20 years, or a fine of not more than $100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than $50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, or to a commercial film or photographic print processor acting pursuant to subsection (8).

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after

arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to the local prosecuting attorney his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to the prosecuting attorney; or keeps the film, photograph, movie film, videotape, negative, or slide according to the prosecuting attorney's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(10) A local municipality or political subdivision shall not enact ordinances, nor enforce existing ordinances, rules, or regulations governing child sexually abusive activity or child sexually abusive material as defined by this section.

Effective date.

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

Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

[No. 630]

(HB 5297)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal

offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 16g of chapter XVII (MCL 777.16g), as amended by 2002 PA 47.

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
750.145c(4)	Person	F	Child sexually abusive activities or materials — possession	4
750.145d(2)(b)	Variable	G	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 1 year but less than 2 years	2
750.145d(2)(c)	Variable	F	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 2 years but less than 4 years	4
750.145d(2)(d)	Variable	D	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 4 years but less than 10 years	10

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

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

Effective date.

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

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5296 of the 91st Legislature is enacted into law.

Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

Compiler's note: House Bill No. 5296, referred to in enacting section 2, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 629, Eff. Mar. 31, 2003.

[No. 631]

(HB 5047)

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," (MCL 760.1 to 777.69) by adding section 12a to chapter V.

The People of the State of Michigan enact:

CHAPTER V

765.12a Money collected in addition to bail or bond money; disposition; purpose.

Sec. 12a. (1) A law enforcement agency that obtains bail or bond money from or on behalf of a person arrested pursuant to a warrant issued by a court may collect, in addition to the bail or bond money, an amount not more than $10.00 from the person arrested or from another person on behalf of the person arrested.

(2) A law enforcement agency collecting the amount of money under subsection (1) shall promptly deposit the money into an account created for that purpose in the treasury of the law enforcement agency's governing body.

(3) The money in the account created under subsection (2) may be expended by the governing body to defray the expense of receiving, depositing, and delivering bail or bond money.

This act is ordered to take immediate effect.
Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

[No. 632]

(HB 5456)

AN ACT to authorize the state administrative board to convey certain property in Jackson county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance.

The People of the State of Michigan enact:

Conveyance of property in Blackman charter township, Jackson county, in a wetland bank; consideration; description.

Sec. 1. The state administrative board, on behalf of the state, may convey for consideration of not less than fair market value as determined under section 3 certain state owned property in Blackman charter township, Jackson county, Michigan, consisting of 581.11 acres, of which 285.28 acres will be placed in a wetland bank, and which is more particularly described as follows:

Blackman Charter Township - Parcel #000-08-13-101-001-01

Legal Description: SEC 13 EXC THEREFROM THE R/W OF GRAND TRUNK RY BEING A STRIP OF LD 100 FT WIDE RUNNING IN A NELY AND SWLY DIRECTION ACROSS SD SEC 13. ALSO EXC ALL THAT PART WH LIES N OF GRAND TRUNK RR AND W OF THOMPSON LAKE DRAIN WHICH BELONGS TO THE STATE OF MICHIGAN BUILDING AUTHORITY. ALSO BEG AT S 1/4 POST OF SEC 14 TH N13 31' 46" W33.87 FT TO N R/W LN OF PARNALL RD TH N89 28' 14" E 715.14 FT TH NO 31' 46" W228.13FT TH N62 37'28" W 579 FT TH N27 22'32" E 300 FT THE S62 37' 28" E 601.53 FT TH S33 22'32"W 124.06 TH S62 37' 28" E 373.71 FT TH N34 48' 44" E 710 FT TH N56 18' 44" E 910 FT TH S33 41' 16" E 400 FT TH N56 18' 44" E 50 FT TO POB TH N33 41' 16" W 135 FT TH N56 18' 44" E 151 FT TH N33 41' 16" W 166 FT TH N56 18' 44" E 600 FT TO E SEC LN OF SEC 14 TH S ALG SD SEC LN T NLY R/W LN OF GRAND TRUNK RR TH SWLY ALG SD R/W TO BEG. ALSO THAT PART OF THE SE 1/4 OF THE SE 1/4 OF SEC 14 LYING S AND W OF SLY LN OR GRAND TRUNK RR. TS2 R1W SPLIT ON 1/12/2001 FROM 000-08-14-226-001-02 AND 000-08-13-101-001-00.

Description subject to adjustment.

Sec. 2. The description of the property in section 1 is approximate and for purposes of conveyance is subject to adjustment, by a state survey or other legal description, as the state administrative board or attorney general considers necessary.

Appraisal.

Sec. 3. The fair market value of the property described in section 1 shall be determined by an appraisal prepared by the state tax commission or an independent fee appraiser.

Use of property.

Sec. 4. Any conveyance authorized under this act shall provide that the property is to be used by the grantee for an industrial park with adjacent wetlands, in conjunction with the enterprise park proposed industrial development plan as presented to the department of management and budget, the department of corrections, Blackman charter township, and Leoni charter township, for review and comment, and with the resolutions of support for that plan from Blackman charter township and Leoni charter township.

Sale of property.

Sec. 5. (1) Any sale of property authorized under this act shall be conducted in a manner to realize the highest price for the sale and the highest return to the state. The sale shall be done in an open manner that uses 1 or more of the following:

(a) A competitive sealed bid.

(b) Oral bid.

(c) Public auction.

(d) Use of broker services.

(2) Broker services for the sale shall only be used if there are 3 or more bidders for this property. The minimum selling price for the property shall be the higher value of either its fair market value or the result of a professional concept plan value as determined by a real estate professional qualified to make such valuations. This real estate professional shall be selected through a request for proposal and competitive bid process.

(3) A notice of a sealed or oral bid, public auction sale, or use of broker negotiation services, regarding the sale of property under this act shall be published at least once in a newspaper as defined in section 1461 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1461, not less than 10 days before the sale. The newspaper shall be one that is published in the county where the property is located. If a newspaper is not published in the county where the property is located, the notice shall be published in a newspaper in a county nearest to the county in which the property is located. The notice shall describe the general location of the property and the date, time, and place of the sale.

Quitclaim deed.

Sec. 6. A conveyance authorized by this act shall be by quitclaim deed approved by the attorney general. To ensure the security and operations of the department of corrections and the state of Michigan, all final sales under this act shall be approved by the department of corrections and the department of management and budget.

Net revenue; disposition; definition.

Sec. 7. The net revenue received under this act shall be deposited in the state treasury and credited to the general fund. As used in this section, "net revenue" means the proceeds from the sale of the property less reimbursement for any costs to the state associated with the sale of the property.

Conditional effective date.

Sec. 8. This act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 616.

(b) House Bill No. 5465.

This act is ordered to take immediate effect.
Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

Compiler's note: Senate Bill No. 616, referred to in Sec. 8, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 671, Eff. Dec. 26, 2002.

House Bill No. 5465, also referred to in Sec. 8, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 633, Eff. Dec. 26, 2002.

[No. 633]

(HB 5465)

AN ACT to authorize the state administrative board to convey certain property in Jackson county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance.

The People of the State of Michigan enact:

Conveyance of property in Leoni charter township, Jackson county, in a wetland bank; consideration; description.

Sec. 1. The state administrative board, on behalf of the state, may convey for consideration of not less than fair market value as determined under section 3 certain state owned property in Leoni charter township, Jackson county, Michigan, consisting of 369.78 acres, of which 2.29 acres will be placed in a wetland bank, and which is more particularly described as follows:

Leoni Township - Parcel # 000-09-18-100-001-00

SECTION 18 EXC THEREFROM RR R/W 100 FT WIDE ACROSS NW COR THEREOF. ALSO EXC S 1/2 OF SE 1/4 OF SE 1/4 ALSO EXC NE 1/4 OF SE 1/4. SEC 18 T2S R1E.

Description subject to adjustment.

Sec. 2. The description of the property in section 1 is approximate and for purposes of conveyance is subject to adjustment, by a state survey or other legal description, as the state administrative board or attorney general considers necessary.

Appraisal.

Sec. 3. The fair market value of the property described in section 1 shall be determined by an appraisal prepared by the state tax commission or an independent fee appraiser.

Use of property.

Sec. 4. Any conveyance authorized under this act shall provide that the property is to be used by the grantee for an industrial park with adjacent wetlands, in conjunction with the enterprise park proposed industrial development plan as presented to the department of management and budget, the department of corrections, Blackman charter township, and Leoni charter township, for review and comment, and with the resolutions of support for that plan from Blackman charter township and Leoni charter township.

Sale of property.

Sec. 5. (1) Any sale of property authorized under this act shall be conducted in a manner to realize the highest price for the sale and the highest return to the state. The sale shall be done in an open manner that uses 1 or more of the following:

(a) A competitive sealed bid.

(b) Oral bid.

(c) Public auction.

(d) Use of broker services.

(2) Broker services for the sale shall only be used if there are 3 or more bidders for this property. The minimum selling price for the property shall be the higher value of either its fair market value or the result of a professional concept plan value as determined by a real estate professional qualified to make such valuations. This real estate professional shall be selected through a request for proposal and competitive bid process.

(3) A notice of a sealed or oral bid, public auction sale, or use of broker negotiation services, regarding the sale of property under this act shall be published at least once in a newspaper as defined in section 1461 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1461, not less than 10 days before the sale. The newspaper shall be one that is published in the county where the property is located. If a newspaper is not published in

the county where the property is located, the notice shall be published in a newspaper in a county nearest to the county in which the property is located. The notice shall describe the general location of the property and the date, time, and place of the sale.

Quitclaim deed.

Sec. 6. A conveyance authorized by this act shall be by quitclaim deed approved by the attorney general. To ensure the security and operations of the department of corrections and the state of Michigan, all final sales under this act shall be approved by the department of corrections and the department of management and budget.

Net revenue; disposition; definition.

Sec. 7. The net revenue received under this act shall be deposited in the state treasury and credited to the general fund. As used in this section, "net revenue" means the proceeds from the sale of the property less reimbursement for any costs to the state associated with the sale of the property.

Conditional effective date.

Sec. 8. This act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) Senate Bill No. 616.

(b) House Bill No. 5456.

This act is ordered to take immediate effect.
Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

Compiler's note: Senate Bill No. 616, referred to in Sec. 8, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 671, Eff. Dec. 26, 2002.

House Bill No. 5456, also referred to in Sec. 8, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 632, Eff. Dec. 26, 2002.

[No. 634]

(HB 6128)

AN ACT to amend 1939 PA 3, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts," (MCL 460.1 to 460.10cc) by adding sections 9 and 9b.

The People of the State of Michigan enact:

460.9 Definitions; customer switched to alternative gas supplier or natural gas utility; prohibitions; standards; rules; violation; remedies and penalties.

Sec. 9. (1) As used in this section:

(a) "Alternative gas supplier" or "supplier" means a person who sells natural gas at unregulated retail rates to customers located in this state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. Retail sales in a customer choice program by an alternative gas supplier do not constitute public utility service.

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

(c) "Customer" means an end-user of natural gas.

(d) "Customer choice program" means a program approved by the commission on application by a natural gas utility that allows retail customers to choose an alternative gas supplier.

(e) "Natural gas utility" means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission.

(2) An alternative gas supplier or natural gas utility shall not switch a customer to its gas supply without authorization of the customer. A natural gas utility shall not be found in violation of this subsection or a commission order issued under subsection (3), if the customer's service was switched by the natural gas utility under the applicable terms and conditions of a commission approved gas customer choice program or as the result of the default of an alternative gas supplier.

(3) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to commission approval, confirming the customer's intent to make a switch and that the customer has approved the specific details of the switch.

(4) An alternative gas supplier or natural gas utility shall not include or add optional services in a customer's service package without the authorization of the customer.

(5) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures approved by the commission confirming the customer's intent to receive the optional services.

(6) An alternative gas supplier or natural gas utility shall not solicit or enter into contracts subject to this section with customers in this state in a misleading, fraudulent, or deceptive manner.

(7) The commission may by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative gas supplier or natural gas utility to ensure that the disclosures, explanations, and sales information contain accurate and understandable information and enable a customer to make an informed decision relating to the purchase of a natural gas commodity. Any standards established under this subsection shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition among alternative gas suppliers or natural gas utilities in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different natural gas supply classes of customers, whenever such different requirements are appropriate to carry out the provisions of this section.

(8) The commission may adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

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

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of subsection (2) or (4), the commission shall order the person to pay a fine of not more than $70,000.00. Each switch made in violation of subsection (2) or service added in violation of subsection (4) shall be a separate offense under this subdivision.

(b) Order an unauthorized supplier to refund to the customer any amount greater than the customer would have paid to an authorized supplier.

(c) Order a portion between 10% to 50% of the fine assessed under subdivision (a) be paid directly to the customer who suffered the violation of subsection (2) or (4).

(d) Order the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier.

(e) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of subsection (2) or (4).

(f) Issue cease and desist orders.

(10) Notwithstanding subsection (9), a fine shall not be imposed for a violation if the person shows that the violation was an unintentional and bona fide error which occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

(11) A natural gas utility shall not be found in violation of this section for switching a customer's supplier or adding optional services to a customer's account if the switch or addition was made pursuant to the request or notice of an alternative gas supplier that is responsible under a customer choice program for obtaining the customer's approval.

460.9b Alternative gas suppliers; licensing procedure; maintenance of office; capabilities; records; tax remittance.

Sec. 9b. (1) The commission shall issue orders establishing a licensing procedure for all alternative gas suppliers participating in any natural gas customer choice program approved by the commission. An alternative gas supplier shall not do business in this state without first receiving a license under this act.

(2) An alternative gas supplier shall maintain an office within this state.

(3) The commission shall assure that an alternative gas supplier doing business in this state has the necessary financial, managerial, and technical capabilities and require the supplier to maintain records that the commission considers necessary.

(4) The commission shall require an alternative gas supplier to collect and remit to state and local units of government all applicable users, sales, and use taxes if the natural gas utility is not doing so on behalf of the supplier.

This act is ordered to take immediate effect.
Approved December 22, 2002.
Filed with Secretary of State December 23, 2002.

[No. 635]

(HB 5999)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 4072 (MCL 500.4072), as amended by 1986 PA 318.

The People of the State of Michigan enact:

500.4072 Standard nonforfeiture law for individual deferred annuities.

Sec. 4072. (1) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(2) This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, premium deposit fund, variable annuity, investment annuity, immediate annuity, a deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to a contract delivered outside this state through an agent or other representative of the company issuing the contract.

(3) Except as provided in subsection (2), for contracts issued on or after the operative date of this section, as defined in subsection (13), a contract of annuity shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the commissioner's opinion are at least as favorable to the contract holder, upon cessation of payment of consideration under the contract:

(a) That upon cessation of payment of consideration under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of a value specified in subsections (6), (7), (8), (9), and (11).

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company will pay in place of any paid-up annuity benefit, a cash surrender benefit of an amount specified in subsections (6), (7), (9), and (11). The company shall reserve the right to defer the payment of the cash surrender benefit for a period of 6 months after demand for the payment with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits.

(d) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by law of the state in which the contract is delivered, and an explanation of the manner in which the benefits are altered by the existence of additional amounts credited by the company to the contract, indebtedness to the company on the contract, or prior withdrawals from or partial surrenders of the contract.

(4) Notwithstanding the requirements of subsection (3), a deferred annuity contract may provide that if considerations have not been received under a contract for a period of 2 full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before this period would be less than $20.00 monthly, the company may at its option terminate the contract by payment in cash of the then present value of that portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit. This payment shall relieve the company of further obligation under the contract.