(*iii*) Be accompanied by an explanation of the change.

(h) If a computer system approved by the commissioner calculates the readability score of a form as being in compliance with this subsection, the form is considered in compliance with the readability score requirements of this subsection.

(4) After January 1, 1992, any change or addition to a policy or annuity contract form for personal, family, or household purposes, whether by indorsement, rider, or otherwise, or a change or addition to a rider or indorsement form to such policy or annuity contract form, which policy or annuity contract form has not been previously approved under subsection (3), shall be submitted for approval pursuant to subsection (3).

(5) Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising, or delivery of any form to any person in this state if it violates any provisions of this act, or contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. The notice shall specify the objectionable provisions or conditions and state the reasons for the commissioner's decision. If the form is legally in use by the insurer in this state, the notice shall give the effective date of the commissioner's disapproval, which shall not be less than 30 days subsequent to the mailing or delivery of the notice to the insurer. If the form is not legally in use, then disapproval shall be effective immediately.

(6) If a form is disapproved or approval is withdrawn under the provisions of this act, the insurer is entitled upon demand to a hearing before the commissioner or a deputy commissioner within 30 days after the notice of disapproval or of withdrawal of approval. After the hearing, the commissioner shall make findings of fact and law, and either affirm, modify, or withdraw his or her original order or decision.

(7) Any issuance, use, or delivery by an insurer of any form without the prior approval of the commissioner as required by subsection (1) or after withdrawal of approval as provided by subsection (5) constitutes a separate violation for which the commissioner may order the imposition of a civil penalty of $25.00 for each offense, but not to exceed the maximum penalty of $500.00 for any 1 series of offenses relating to any 1 basic policy form, which penalty may be recovered by the attorney general as provided in section 230.

(8) The filing requirements of this section do not apply to any of the following:

(a) Insurance against loss of or damage to:

(*i*) Imports, exports, or domestic shipments.

(*ii*) Bridges, tunnels, or other instrumentalities of transportation and communication.

(*iii*) Aircraft and attached equipment.

(*iv*) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(b) Insurance against loss resulting from liability, other than worker's compensation or employers' liability arising out of the ownership, maintenance, or use of:

(*i*) Imports, exports, or domestic shipments.

(*ii*) Aircraft and attached equipment.

(*iii*) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(c) Surety bonds other than fidelity bonds.

(d) Policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or that relate to the manner of distri-

bution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Beginning September 1, 1968, the commissioner by order may exempt from the filing requirements of this section and sections 2242, 3606, and 4430 for so long as he or she considers proper any insurance document or form, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, as specified in the order to which this section practicably may not be applied, or the filing and approval of which are considered unnecessary for the protection of the public. Insurance documents or forms providing medical payments or income replacement benefits, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to section 3109a, exempt by order of the commissioner from the filing requirements of this section and sections 2242 and 3606 are considered approved by the commissioner for purposes of section 3430.

(e) Insurance that meets both of the following:

(*i*) Is sold to an exempt commercial policyholder.

(*ii*) Contains a prominent disclaimer that states "This policy is exempt from the filing requirements of section 2236 of the insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that are substantially similar.

(9) As used in this section and sections 2401 and 2601, "exempt commercial policyholder" means an insured that purchases the insurance for other than personal, family, or household purposes.

(10) Every order made by the commissioner under the provisions of this section is subject to court review as provided in section 244.

500.2401 Applicability of chapter; insurance or coverage subject to regulation by another rate regulatory chapter; filing designation with commissioner; order for prior approval; absence of reasonable degree of competition.

Sec. 2401. (1) Except as provided in subsection (2), this chapter applies to the following kinds of insurance or coverages on risks or operations in this state:

(a) Casualty insurance, as defined in section 624, except as to livestock insurance.

(b) Surety and fidelity.

(c) Automobile insurance, as defined or included under the following sections:

(*i*) 624 (general definition of casualty insurance).

(*ii*) 7202 (insuring powers of reciprocal insurers).

(*iii*) 620 (automobile insurance (limited) defined).

(*iv*) 614 (marine insurance defined).

(d) Worker's compensation insurance, as defined or included under the following sections:

(*i*) 624 (general definition of casualty insurance).

(*ii*) 7202 (insuring powers of reciprocal insurers).

(e) To all insurance transacted by a reciprocal insurer pursuant to section 7202 (insuring powers of reciprocal insurers).

(f) Personal property floaters.

(g) Title insurance.

(2) This chapter does not apply to any of the following:

(a) Reinsurance, other than joint reinsurance to the extent stated in section 2464.

(b) Disability insurance.

(c) Insurance against loss of or damage to aircraft or against liability, other than worker's compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft.

(d) Insurance that meets both of the following and is not worker's compensation insurance:

(*i*) Is sold to an exempt commercial policyholder.

(*ii*) Contains a prominent disclaimer that states "This policy is exempt from the filing requirements of section 2236 of the insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that are substantially similar.

(3) This chapter applies to all classes of insurers admitted to do business in this state, including stock, mutual, reciprocal, and interinsurers authorized to write any of the kinds of insurance to which this chapter applies under this act.

(4) If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory chapter of this act, an insurer to which both chapter 24 and chapter 26 are otherwise applicable shall file with the commissioner, a designation as to which rate regulatory chapter shall be applicable to the insurer with respect to such kind of insurance, subdivision, or combination thereof, or type of coverage.

(5) If, pursuant to subsection (6), the commissioner certifies the absence of a reasonable degree of competition for a specified classification, type, or kind of insurance, the commissioner may order that each insurer file for prior approval, subject to the provisions of this chapter, any changes to its manuals of classification, manuals of rules and rates, and rating plans the insurer proposes to use for that specified classification, type, or kind of insurance. The order shall state, in writing, the reasons for the commissioner's decision to order the filing. An order issued under this subsection expires 2 years after the date of issuance. If such an order is in effect, rates to which the order applies shall be filed at least 30 days before their proposed effective date. Failure of the commissioner to act within 30 days after submittal constitutes approval.

(6) A determination concerning the absence of a reasonable degree of competition shall take into account a reasonable spectrum of relevant economic tests, including the number of insurers actively engaged in writing the insurance in question, the present availability of that insurance compared to the availability in comparable past periods, the underwriting return of that insurance over a reasonable period of time sufficient to assure reliability in relation to the risk associated with that insurance, and the difficulty encountered by new insurers entering the market in order to compete for the writing of that insurance.

500.2601 Scope of chapter.

Sec. 2601. (1) This chapter applies to the following kinds of insurance as written on risks located in this state by and companies, associations, or other carriers, including reciprocals:

(a) Property insurance, as defined in section 610.

(b) Marine insurance, as defined in section 614.

(c) Inland navigation and transportation insurance, as defined in section 616.

(d) Automobile insurance (limited), as defined in section 620.

(2) "Inland marine insurance" shall be considered to include:

(a) Insurance against loss of or damage to domestic shipments, bridges, tunnels, and other inland instrumentalities of transportation or communication, excluding buildings, their furniture and furnishings, fixed contents, and supplies held in storage.

(b) Insurance defined by ruling of the commissioner as inland marine insurance.

(3) This chapter does not apply to any of the following:

(a) Reinsurance, other than joint reinsurance to the extent stated in section 2658.

(b) Insurance against loss of or damage to:

(*i*) Imports, exports, or domestic shipments.

(*ii*) Bridges, tunnels, or other instrumentalities of transportation and communication.

(*iii*) Aircraft and attached equipment.

(*iv*) Vessels and watercraft under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(c) Insurance against loss resulting from liability arising out of the ownership, maintenance, or use of:

(*i*) Imports, exports, or domestic shipments.

(*ii*) Aircraft and attached equipment.

(*iii*) Vessels and watercraft that are under construction or owned by or used in a business or having a straight-line hull length of more than 24 feet.

(d) Motor vehicle insurance, nor to insurance against liability arising out of the ownership, maintenance, or use of motor vehicles.

(e) Companies organized and doing business under chapter 68.

(f) Insurance that meets both of the following:

(*i*) Is sold to an exempt commercial policyholder.

(*ii*) Contains a prominent disclaimer that states "This policy is exempt from the filing requirements of section 2236 of the insurance code of 1956, 1956 PA 218, MCL 500.2236." or words that are substantially similar.

(4) If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory chapter of this act, an insurer to which both chapters are otherwise applicable shall file with the commissioner a designation as to which rate regulatory chapter shall be applicable to it with respect to such kind of insurance, subdivision, or combination thereof, or type of coverage.

(5) If, pursuant to subsection (6), the commissioner certifies the absence of a reasonable degree of competition for a specified classification, type, or kind of insurance, the commissioner may order that each insurer file for prior approval, subject to the provisions of this chapter, any changes to its manuals of classification, manuals of rules and rates, and rating plans the insurer proposes to use for that specified classification, type, or kind of insurance. The order shall state, in writing, the reasons for the commissioner's decision to order the filing. An order issued under this subsection expires 2 years after the date of issuance. If such an order is in effect, rates to which the order applies shall be filed at least 30 days before their proposed effective date. Failure of the commissioner to act within 30 days after submittal constitutes approval.

(6) A determination concerning the existence of a reasonable degree of competition shall take into account a reasonable spectrum of relevant economic tests, including the number of insurers actively engaged in writing the insurance in question, the present availability of that insurance compared to the availability in comparable past periods, the underwriting return of that insurance over a reasonable period of time sufficient to assure reliability in relation to the risk associated with that insurance, and the difficulty encountered by new insurers entering the market in order to compete for the writing of that insurance.

Approved December 25, 2002.

Filed with Secretary of State December 26, 2002.

Compiler's note: In subsection (1), of MCL 500.2601, the phrase "as written on risks located in this state by and companies," evidently should read "as written on risks located in this state by any companies,".

[No. 665]

(HB 5394)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 7401 and 7403 (MCL 333.7401 and 333.7403), as amended by 2001 PA 236.

The People of the State of Michigan enact:

333.7401 Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive sentence; discharge from lifetime probation; "plant" defined.

Sec. 7401. (1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*) and:

(*i*) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than $1,000,000.00, or both.

(*ii*) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony and punishable by imprisonment for not more than 30 years or a fine of not more than $500,000.00, or both.

(*iii*) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $250,000.00, or both.

(*iv*) Which is in an amount less than 50 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

(b) Either of the following:

(*i*) A substance described in section 7214(c)(*ii*) is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

(*ii*) Any other controlled substance classified in schedule 1, 2, or 3, except marihuana is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $10,000.00, or both.

(c) A substance classified in schedule 4 is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.

(d) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows:

(*i*) If the amount is 45 kilograms or more, or 200 plants or more, by imprisonment for not more than 15 years or a fine of not more than $10,000,000.00, or both.

(*ii*) If the amount is 5 kilograms or more but less than 45 kilograms, or 20 plants or more but fewer than 200 plants, by imprisonment for not more than 7 years or a fine of not more than $500,000.00, or both.

(*iii*) If the amount is less than 5 kilograms or fewer than 20 plants, by imprisonment for not more than 4 years or a fine of not more than $20,000.00, or both.

(e) A substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(f) A prescription form or a counterfeit prescription form is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $5,000.00, or both.

(3) A term of imprisonment imposed under subsection (2)(a) may be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

(4) If an individual was sentenced to lifetime probation under subsection (2)(a)(*iv*) before the effective date of the amendatory act that added this subsection and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(5) As used in this section, "plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

333.7403 Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; discharge from lifetime probation.

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled

substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*), and:

(*i*) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than $1,000,000.00, or both.

(*ii*) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 30 years or a fine of not more than $500,000.00, or both.

(*iii*) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $250,000.00, or both.

(*iv*) Which is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $25,000.00, or both.

(*v*) Which is in an amount less than 25 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $25,000.00, or both.

(b) Either of the following:

(*i*) A substance described in section 7214(c)(*ii*) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00, or both.

(*ii*) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (b)(*i*), (c), or (d), or a controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(d) Marihuana is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(e) A prescription form is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) If an individual was sentenced to lifetime probation under subsection (2)(a)(*iv*) before the effective date of the amendatory act that added this subsection and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

Effective date.

Enacting section 1. This amendatory act takes effect March 1, 2003.

Conditional effective date.

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

(a) House Bill No. 5395.

(b) House Bill No. 6510.

This act is ordered to take immediate effect.
Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5395, referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 666, Eff. Mar. 1, 2003.

House Bill No. 6510, also referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 670, Eff. Mar. 1, 2003.

[No. 666]

(HB 5395)

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 34 of chapter IX, sections 1 and 2 of chapter XI, and sections 13m, 43, 45, and 57 of chapter XVII (MCL 769.34, 771.1, 771.2, 777.13m, 777.43, 777.45, and 777.57), section 34 of chapter IX and section 43 of chapter XVII as amended by 2000 PA 279, section 1 of chapter XI as amended by 2002 PA 483, section 2 of chapter XI as amended by 1998 PA 520, section 13m of chapter XVII as added by 2002 PA 30, section 45 of chapter XVII as added by 1998 PA 317, and section 57 of chapter XVII as amended by 1999 PA 227.

The People of the State of Michigan enact:

CHAPTER IX

769.34 Sentencing guidelines; duties of court.

Sec. 34. (1) The sentencing guidelines promulgated by order of the Michigan supreme court do not apply to felonies enumerated in part 2 of chapter XVII committed on or after January 1, 1999.

(2) Except as otherwise provided in this subsection or for a departure from the appropriate minimum sentence range provided for under subsection (3), the minimum sentence imposed by a court of this state for a felony enumerated in part 2 of chapter XVII committed on or after January 1, 1999 shall be within the appropriate sentence range under the version of those sentencing guidelines in effect on the date the crime was committed. Both of the following apply to minimum sentences under this subsection:

(a) If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute. Imposing a mandatory minimum sentence is not a departure under this section. If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the statute authorizes the sentencing judge to depart from that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section. If the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections and the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, authorizes the sentencing judge to impose a sentence that is less than that minimum sentence, imposing a sentence that exceeds the recommended sentence range but is less than the mandatory minimum sentence is not a departure under this section.

(b) The court shall not impose a minimum sentence, including a departure, that exceeds 2/3 of the statutory maximum sentence.

(3) A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. All of the following apply to a departure:

(a) The court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range.

(b) The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.

(4) Intermediate sanctions shall be imposed under this chapter as follows:

(a) If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

(b) If an attempt to commit a felony designated in offense class H in part 2 of chapter XVII is punishable by imprisonment for more than 1 year, the court shall impose an intermediate sanction upon conviction of that offense absent a departure.

(c) If the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit of the recommended minimum sentence is 12 months or less, the court shall sentence the offender as follows absent a departure:

(*i*) To imprisonment with a minimum term within that range.

(*ii*) To an intermediate sanction that may include a term of imprisonment of not more than 12 months.

(5) If a crime has a mandatory determinant penalty or a mandatory penalty of life imprisonment, the court shall impose that penalty. This section does not apply to sentencing for that crime.

(6) As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments. The court shall order payment of restitution as provided by law.

(7) If the trial court imposes on a defendant a minimum sentence that is longer or more severe than the appropriate sentence range, as part of the court's advice of the defendant's rights concerning appeal, the court shall advise the defendant orally and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range.

(8) All of the following shall be part of the record filed for an appeal of a sentence under this section:

(a) An entire record of the sentencing proceedings.

(b) The presentence investigation report. Any portion of the presentence investigation report exempt from disclosure by law shall not be a public record.

(c) Any other reports or documents the sentencing court used in imposing sentence.

(9) An appeal of a sentence under this section does not stay execution of the sentence.

(10) If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

(11) If, upon a review of the record, the court of appeals finds the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range, the court shall remand the matter to the sentencing judge or another trial court judge for resentencing under this chapter.

(12) Time served on the sentence appealed under this section is considered time served on any sentence imposed after remand.

CHAPTER XI

771.1 Requirements for probation; delayed sentence; fee; applicability of section to certain juveniles.

Sec. 1. (1) In all prosecutions for felonies or misdemeanors other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, and major controlled

substance offenses not described in subsection (4), if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer.

(2) In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

(3) If a defendant is before the circuit court and the court delays imposing sentence under subsection (2), the court shall include in the delayed sentence order that the department of corrections shall collect a supervision fee of not more than $135.00 multiplied by the number of months of delay ordered, but not more than 12 months. The fee is payable when the delayed sentence order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that defendant. In determining the amount of the fee, the court shall consider the defendant's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

Projected Monthly Income	Amount of Fee
$ 0-249.99	$ 10.00
$ 250.00-499.99	$ 10.00
$ 500.00-749.99	$ 25.00
$ 750.00-999.99	$ 40.00
$1,000.00 or more	5% of projected monthly income, but not more than $135.00

The court may order a higher amount than indicated by the table, up to the maximum of $135.00 multiplied by the number of months of delay ordered but not more than 12 months, if the court determines that the defendant has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(4) This section does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

771.2 Probation period; order fixing period and conditions of probation; registration pursuant to sex offenders registration act; reduction in probation period; subsection (1) inapplicable to certain juveniles.

Sec. 2. (1) Except as provided in section 2a of this chapter, if the defendant is convicted for an offense that is not a felony, the probation period shall not exceed 2 years. Except as provided in section 2a of this chapter, if the defendant is convicted of a felony, the probation period shall not exceed 5 years.

(2) The court shall by order, to be filed or entered in the cause as the court may direct by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(3) A defendant who was placed on probation under section 1(4) of this chapter prior to the effective date of the act that amended this section is subject to the conditions of probation specified in section 3 of this chapter, including payment of a probation supervision fee as prescribed in section 3c of this chapter, and to revocation for violation of these conditions, but the probation period shall not be reduced other than by a revocation that results in imprisonment or as otherwise provided by law.

(4) If an individual is placed on probation for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the individual's probation officer shall register the individual or accept the individual's registration as provided in that act.

(5) Subsection (1) does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

CHAPTER XVII

777.13m Applicability of chapter to certain felonies; §§ 333.7341(8) to 333.7410a.

Sec. 13m. This chapter applies to the following felonies enumerated in chapter 333 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
333.7341(8)	CS	G	Delivery or manufacture of imitation controlled substance	2
333.7401(2)(a)(*i*)	CS	A	Delivery or manufacture of 1,000 or more grams of certain schedule 1 or 2 controlled substances	Life
333.7401(2)(a)(*ii*)	CS	A	Delivery or manufacture of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30
333.7401(2)(a)(*iii*)	CS	B	Delivery or manufacture of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20
333.7401(2)(a)(*iv*)	CS	D	Delivery or manufacture of less than 50 grams of certain schedule 1 or 2 controlled substances	20
333.7401(2)(b)(*i*)	CS	B	Delivery or manufacture of methamphetamine	20
333.7401(2)(b)(*ii*)	CS	E	Delivery or manufacture of certain schedule 1, 2, or 3 controlled substances	7
333.7401(2)(c)	CS	F	Delivery or manufacture of schedule 4 controlled substance	4

333.7401(2)(d)(*i*)	CS	C	Delivery or manufacture of 45 or more kilograms of marijuana	15
333.7401(2)(d)(*ii*)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7
333.7401(2)(d)(*iii*)	CS	F	Delivery or manufacture of less than 5 kilograms or 20 plants of marijuana	4
333.7401(2)(e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2
333.7401(2)(f)	CS	D	Delivery or manufacture of an official or counterfeit prescription form	20
333.7401(2)(g)	CS	D	Delivery or manufacture of prescription or counterfeit form (other than official)	7
333.7401a	Person	B	Delivering a controlled substance or GBL with intent to commit criminal sexual conduct	20
333.7401b(3)(a)	CS	E	Delivery or manufacture of GBL	7
333.7401b(3)(b)	CS	G	Possession of GBL	2
333.7401c(2)(a)	CS	D	Operating or maintaining controlled substance laboratory	10
333.7401c(2)(b)	CS	B	Operating or maintaining controlled substance laboratory in presence of minor	20
333.7401c(2)(c)	CS	B	Operating or maintaining controlled substance laboratory involving hazardous waste	20
333.7401c(2)(d)	CS	B	Operating or maintaining controlled substance laboratory near certain places	20
333.7401c(2)(e)	CS	A	Operating or maintaining controlled substance laboratory involving firearm or other harmful device	25
333.7402(2)(a)	CS	D	Delivery or manufacture of certain imitation controlled substances	10
333.7402(2)(b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 imitation controlled substance	5
333.7402(2)(c)	CS	F	Delivery or manufacture of imitation schedule 4 controlled substance	4
333.7402(2)(d)	CS	G	Delivery or manufacture of imitation schedule 5 controlled substance	2
333.7402(2)(e)	CS	C	Delivery or manufacture of controlled substance analogue	15
333.7403(2)(a)(*i*)	CS	A	Possession of 1,000 or more grams of certain schedule 1 or 2 controlled substances	Life

333.7403(2)(a)(*ii*)	CS	A	Possession of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30
333.7403(2)(a)(*iii*)	CS	B	Possession of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20
333.7403(2)(a)(*iv*)	CS	G	Possession of 25 or more but less than 50 grams of certain schedule 1 or 2 controlled substances	4
333.7403(2)(a)(*v*)	CS	G	Possession of less than 25 grams of certain schedule 1 or 2 controlled substances	4
333.7403(2)(b)(*i*)	CS	D	Possession of methamphetamine	10
333.7403(2)(b)(*ii*)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or controlled substances analogue	2
333.7403(2)(e)	CS	H	Possession of official prescription form	1
333.7405(a)	CS	G	Controlled substance violations by licensee	2
333.7405(b)	CS	G	Manufacturing or distribution violations by licensee	2
333.7405(c)	CS	G	Refusing lawful inspection	2
333.7405(d)	CS	G	Maintaining drug house	2
333.7407(1)(a)	CS	G	Controlled substance violations by licensee	4
333.7407(1)(b)	CS	G	Use of fictitious, revoked, or suspended license number	4
333.7407(1)(c)	CS	G	Obtaining controlled substance by fraud	4
333.7407(1)(d)	CS	G	False reports under controlled substance article	4
333.7407(1)(e)	CS	G	Possession of counterfeiting implements	4
333.7407(1)(f)	CS	F	Disclosing or obtaining prescription information	4
333.7407(1)(g)	CS	F	Possession of counterfeit prescription form	4
333.7407(2)	CS	G	Refusing to furnish records under controlled substance article	4
333.7410a	CS	G	Controlled substance offense or offense involving GBL in or near a park	2

777.43 Continuing pattern of criminal behavior.

Sec. 43. (1) Offense variable 13 is continuing pattern of criminal behavior. Score offense variable 13 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age ..... 50 points

(b) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person ..... 25 points

(c) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of section 7401(2)(a)(*i*) to (*iii*) or section 7403(2)(a)(*i*) to (*iii*) ..... 10 points

(d) The offense was part of a pattern of felonious criminal activity directly related to membership in an organized criminal group..... 10 points

(e) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more violations of section 7401(2)(a)(*i*) to (*iii*) or section 7403(2)(a)(*i*) to (*iii*) ..... 10 points

(f) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against property ..... 5 points

(g) No pattern of felonious criminal activity existed..... 0 points

(2) All of the following apply to scoring offense variable 13:

(a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.

(b) The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense.

(c) Except for offenses related to membership in an organized criminal group, do not score conduct scored in offense variable 11 or 12.

(d) Score 50 points only if the sentencing offense is first degree criminal sexual conduct.

(e) Do not count more than 1 controlled substance offense arising out of the criminal episode for which the person is being sentenced.

(f) Do not count more than 1 crime involving the same controlled substance. For example, do not count conspiracy and a substantive offense involving the same amount of controlled substances or possession and delivery of the same amount of controlled substances.

777.45 Aggravated controlled substance offenses.

Sec. 45. (1) Offense variable 15 is aggravated controlled substance offenses. Score offense variable 15 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 1,000 or more grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*) ..... 100 points

(b) The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 450 grams or more but less than 1,000 grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*)..... 75 points

(c) The offense involved the manufacture, creation, delivery, possession, or possession with intent to manufacture, create, or deliver of 50 or more grams but less than 450 grams of any mixture containing a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*) ..... 50 points

(d) The offense involved the sale or delivery of a controlled substance other than marihuana or a mixture containing a controlled substance other than marihuana by the offender who was 18 years of age or older to a minor who was 3 or more years younger than the offender ..... 25 points

(e) The offense involved the sale, delivery, or possession with intent to sell or deliver 45 kilograms or more of marihuana or 200 or more of marihuana plants ..... 10 points

(f) The offense is a violation of section 7401(2)(a)(*i*) to (*iii*) pertaining to a controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(*iv*) and was committed in a minor's abode, settled home, or domicile, regardless of whether the minor was present ..... 10 points

(g) The offense involved the delivery or possession with intent to deliver marihuana or any other controlled substance or a counterfeit controlled substance or possession of controlled substances or counterfeit controlled substances having a value or under such circumstances as to indicate trafficking ..... 5 points

(h) The offense was not an offense described in subdivisions (a) through (g) ..... 0 points

(2) As used in this section:

(a) "Deliver" means the actual or constructive transfer of a controlled substance from 1 individual to another regardless of remuneration.

(b) "Minor" means an individual 17 years of age or less.

(c) "Trafficking" means the sale or delivery of controlled substances or counterfeit controlled substances on a continuing basis to 1 or more other individuals for further distribution.

777.57 Subsequent or concurrent felony convictions.

Sec. 57. (1) Prior record variable 7 is subsequent or concurrent felony convictions. Score prior record variable 7 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) The offender has 2 or more subsequent or concurrent convictions ..... 20 points

(b) The offender has 1 subsequent or concurrent conviction ..... 10 points

(c) The offender has no subsequent or concurrent convictions ..... 0 points

(2) All of the following apply to scoring record variable 7:

(a) Score the appropriate point value if the offender was convicted of multiple felony counts or was convicted of a felony after the sentencing offense was committed.

(b) Do not score a felony firearm conviction in this variable.

(c) Do not score a concurrent felony conviction if a mandatory consecutive sentence or a consecutive sentence imposed under section 7401(3) of the public health code, 1978 PA 368, MCL 333.7401, will result from that conviction.

Effective date.

Enacting section 1. This amendatory act takes effect March 1, 2003.

Conditional effective date.

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

(a) House Bill No. 5394.

(b) House Bill No. 6510.

This act is ordered to take immediate effect.
Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5394, referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 665, Eff. Mar. 1, 2003.

House Bill No. 6510, also referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 670, Eff. Mar. 1, 2003.

[No. 667]

(HB 5734)

AN ACT to amend 1980 PA 119, entitled "An act to prescribe a privilege tax for the use of public roads and highways of this state by motor carriers by imposing a specific tax upon the use of motor fuel within this state; to provide for certain credits against this tax and certain mechanisms for paying, collecting, and enforcing this tax; to provide for the licensing of motor carriers and for exemptions from licensure; to require the keeping and providing for the examination of certain reports; to provide review procedures for the assessment of the tax and revocation of a license; to impose certain duties upon and confer certain powers to certain state departments and agencies; to prescribe certain penalties for the violation of this act; and to make appropriations," by amending sections 1, 2, and 4 (MCL 207.211, 207.212, and 207.214), sections 1 and 4 as amended by 2000 PA 406 and section 2 as amended by 1996 PA 584.

The People of the State of Michigan enact:

207.211 Definitions.

Sec. 1. As used in this act:

(a) "Axle" means any 2 or more load-carrying wheels mounted in a single transverse vertical plane.

(b) "Commissioner" means the state commissioner of revenue.

(c) "Department" means the revenue division of the department of treasury.

(d) "Motor carrier" means:

(*i*) A person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(*ii*) A person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and who is licensed under the international fuel tax agreement.

(e) "Motor fuel" means diesel fuel as defined by the motor fuel tax act.

(f) "Nonprofit private, parochial, denominational, or public school, college, or university" means an elementary, secondary, or postsecondary educational facility.

(g) "Person" means a natural person, partnership, firm, association, joint stock company, limited liability company, limited liability partnership, syndicate, or corporation, and any receiver, trustee, conservator, or officer, other than a unit of government, having jurisdiction and control of property by virtue of law or by appointment of a court.

(h) "Public roads or highways" means a road, street, or place maintained by this state or a political subdivision of this state and generally open to use by the public as a matter of right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel restricted for the purpose of construction, maintenance, repair, or reconstruction.

(i) "Qualified commercial motor vehicle", subject to subdivision (j), means a motor vehicle used, designed, or maintained for transportation of persons or property and 1 of the following:

(*i*) Having 3 or more axles regardless of weight.

(*ii*) Having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 12,000 kilograms.

(*iii*) Is used in a combination of vehicles, if the weight of that combination exceeds 26,000 pounds or 12,000 kilograms gross vehicle or registered gross vehicle weight.

(j) "Qualified commercial motor vehicle" shall not include a recreational vehicle, a road tractor, truck, or truck tractor used exclusively in this state, a road tractor, truck, or truck tractor owned by a farmer and used in connection with the farmer's farming operation and not used for hire, a school bus, a bus defined and certificated under the motor bus transportation act, 1982 PA 432, MCL 474.101 to 474.141, or a bus operated by a public transit agency operating under any of the following:

(*i*) A county, city, township, or village as provided by law, or other authority incorporated under 1963 PA 55, MCL 124.351 to 124.359. Each authority and governmental agency incorporated under 1963 PA 55, MCL 124.351 to 124.359, has the exclusive jurisdiction to determine its own contemplated routes, hours of service, estimated transit vehicle miles, costs of public transportation services, and projected capital improvements or projects within its service area.

(*ii*) An authority incorporated under the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426, or that operates a transportation service pursuant to an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(*iii*) A contract entered into pursuant to 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or 1951 PA 35, MCL 124.1 to 124.13.

(*iv*) An authority incorporated under the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479, or a nonprofit corporation organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, that provides transportation services.

(*v*) An authority financing public improvements to transportation systems under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(k) Qualified commercial motor vehicle includes a vehicle operated on a public road or highway owned by a farmer and used in connection with the farmer's farming operation if the vehicle bears out of state registration plates of a state that does not give similar treatment to vehicles from this state.

207.212 Motor carrier fuel tax; calculation; rate; quarterly return and tax payment; form determining amount of motor fuel consumed and average miles per gallon; presumption; remittance; filing returns and paying tax for other than quarterly periods.

Sec. 2. (1) A motor carrier licensed under this act shall pay a road tax calculated on the amount of motor fuel consumed in qualified commercial motor vehicles on the public roads or highways within this state. The tax shall be at the rate of 15 cents per gallon on motor fuel consumed on the public roads or highways within this state. In addition, qualified commercial motor vehicles licensed under this act that travel in interstate commerce will be subject to the definition of taxable motor fuels and rates as defined by the respective international fuel tax agreement member jurisdictions. A return shall be filed, and the tax due paid, quarterly to the department on or before the last day of January, April, July, and October of each year on a form prescribed and furnished by the department. Each quarterly return and tax payment shall cover the liability for the annual quarter ending on the last day of the preceding month.

(2) The amount of motor fuel consumed in the operation of a motor carrier on public roads or highways within this state shall be determined by dividing the miles traveled within Michigan by the average miles per gallon of motor fuel. The average miles per gallon of motor fuel shall be determined by dividing the miles traveled within and outside of Michigan by the total amount of motor fuel consumed within and outside of Michigan.

(3) In the absence of records showing the average number of miles operated per gallon of motor fuel, it shall be presumed that 1 gallon of motor fuel is consumed for every 4 miles traveled.

(4) The quarterly tax return shall be accompanied by a remittance covering any tax due.

(5) The commissioner, when he or she considers it necessary to ensure payment of the tax or to provide a more efficient administration of the tax, may require the filing of returns and payment of the tax for other than quarterly periods.

207.214 Tax credit; refund; receipt required; false statement as misdemeanor; penalty.

Sec. 4. (1) A person filing a return pursuant to section 2 who purchased motor fuel in this state upon which a tax was imposed and not refunded pursuant to the motor fuel tax act, shall be entitled to a credit against the tax imposed by this act equal to the tax paid when purchasing the motor fuel pursuant to the motor fuel tax act. The excess of a credit allowed by this subsection over tax liabilities imposed by this act shall be refunded to the taxpayer.

(2) In order to secure credit under subsection (1) for motor fuel purchased in this state the motor carrier shall secure a receipt showing the seller's name, the number of gallons of motor fuel, the type of motor fuel, the address of the seller, the license number or unit number of the commercial motor vehicle, and the date of sale.

(3) A refund, when approved by the department, shall be payable from the revenue received under this act.

(4) A person, or an agent, employee, or representative of the person, who makes a false statement in any return under this act or who submits or provides an invoice or invoices in support of the false statement upon which alterations or changes exist in the date, name of seller or purchaser, number of gallons, identity of the qualified commercial motor vehicle into which fuel was delivered or the amount of tax that was paid, or who knowingly presents any return or invoice containing a false statement, or who collects or causes to

be paid a refund without being entitled to the refund, forfeits the full amount of the claim and is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00 or imprisonment for not more than 1 year, or both.

Effective date.

Enacting section 1. This amendatory act takes effect April 1, 2003.

Conditional effective date.

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

(a) House Bill No. 5735.

(b) House Bill No. 5736.

Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5735, referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 668, Eff. Apr. 1, 2003.

House Bill No. 5736, also referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 669, Eff. Mar. 31, 2003.

[No. 668]

(HB 5735)

AN ACT to amend 2000 PA 403, entitled "An act to prescribe a tax on the sale and use of certain types of fuel in motor vehicles on the public roads or highways of this state and on certain other types of gas; to prescribe the manner and the time of collection and payment of this tax and the duties of officials and others pertaining to the payment and collection of this tax; to provide for the licensing of persons involved in the sale, use, or transportation of motor fuel and the collection and payment of the tax imposed by this act; to prescribe fees; to prescribe certain other powers and duties of certain state agencies and other persons; to provide for exemptions and refunds and for the disposition of the proceeds of this tax; to provide for appropriations from the proceeds of this tax; to prescribe remedies and penalties for the violation of this act; and to repeal acts and parts of acts," by amending sections 2, 3, 4, 5, 8, 30, 37, 38, 92, 121, and 122 (MCL 207.1002, 207.1003, 207.1004, 207.1005, 207.1008, 207.1030, 207.1037, 207.1038, 207.1092, 207.1121, and 207.1122); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

207.1002 Definitions; A to E.

Sec. 2. As used in this act:

(a) "Alcohol" means fuel grade ethanol or a mixture of fuel grade ethanol and another product.

(b) "Blendstock" means and includes any petroleum product component of motor fuel, such as naphtha, reformate, or toluene; or any oxygenate that can be blended for use in a motor fuel.

(c) "Blended motor fuel" means a mixture of motor fuel and another liquid, other than a de minimis amount of a product including, but not limited to, carburetor detergent or oxidation inhibitor, that can be used as motor fuel in a motor vehicle.

(d) "Blender" means and includes any person who produces blended motor fuel outside of the bulk transfer/terminal system.

(e) "Blends" or "blending" means the mixing of 1 or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane, or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(f) "Bulk end user" means a person who receives into the person's own storage facilities by transport truck or tank wagon motor fuel for the person's own consumption.

(g) "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be withdrawn by a tank wagon, a transport truck, or a marine vessel.

(h) "Bulk transfer" means a transfer of motor fuel from 1 location to another by pipeline tender or marine delivery within the bulk transfer/terminal system, including, but not limited to, all of the following transfers:

(*i*) A marine vessel movement of motor fuel from a refinery or terminal to a terminal.

(*ii*) Pipeline movements of motor fuel from a refinery or terminal to a terminal.

(*iii*) Book transfers of motor fuel within a terminal between licensed suppliers before completion of removal across the terminal rack.

(*iv*) Two-party exchanges between licensed suppliers.

(i) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, pipeline, terminal, or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(j) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(k) "Commercial motor vehicle" means a motor vehicle licensed under the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

(*l*) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the tank's draw pipe. The amount of motor fuel in dead storage is 200 gallons for a tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more.

(m) "Denaturants" means and includes gasoline, natural gasoline, gasoline components, or toxic or noxious materials added to fuel grade ethanol to make it unsuitable for beverage use but not unsuitable for automotive use.

(n) "Department" means the bureau of revenue within the department of treasury or its designee.

(o) "Destination state" means the state, Canadian province or territory, or foreign country to which motor fuel is directed for export.

(p) "Diesel fuel" means any liquid other than gasoline that is capable of use as a fuel or a component of a fuel in a motor vehicle that is propelled by a diesel-powered engine or in a diesel-powered train. Diesel fuel includes number 1 and number 2 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel fuel also includes any blendstock or additive that is sold for blending with diesel fuel, any liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a diesel-powered engine, airplane, or marine vessel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for diesel fuel. Diesel fuel does not include an excluded liquid.

(q) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with internal revenue service rules or pursuant to any other internal revenue service requirements, including any invisible marker requirements.

(r) "Eligible purchaser" means a person who has been authorized by the department under section 75 to make the election under section 74.

(s) "Excluded liquid" means that term as defined in 26 C.F.R. 48.4081-1.

(t) "Export" means to obtain motor fuel in this state for sale or other distribution outside of this state. Motor fuel delivered outside of this state by or for the seller constitutes an export by the seller and motor fuel delivered outside of this state by or for the purchaser constitutes an export by the purchaser.

(u) "Exporter" means a person who exports motor fuel.

207.1003 Definitions; F to I.

Sec. 3. As used in this act:

(a) "Fuel feedstock user" means a person who receives motor fuel for the person's own use in the manufacture or production of any substance other than motor fuel.

(b) "Fuel grade ethanol" means the American society for testing and materials standard in effect on the effective date of this act as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

(c) "Fuel transportation vehicle" means a vehicle designed or used to transport motor fuel on the public roads or highways. Fuel transportation vehicle includes, but is not limited to, a transport truck and a tank wagon. Fuel transportation vehicle does not include a vehicle transporting a nurse tank or limited volume auxiliary-mounted supply tank used for fueling an implement of husbandry.

(d) "Gallon" means a unit of liquid measure as customarily used in the United States containing 231 cubic inches, or 4 quarts, or its metric equivalent expressed in liters. Where the term gallon appears in this act, the term liters is interchangeable so long as the equivalence of a gallon and 3.785 liters is preserved. A quantity required to be furnished under this act may be specified in liters when authorized by the department.

(e) "Gasohol" means a blended motor fuel composed of gasoline and fuel grade ethanol.

(f) "Gasoline" means and includes gasoline, alcohol, gasohol, casing head or natural gasoline, benzol, benzine, naphtha, and any blendstock additive, or other product including methanol that is sold for blending with gasoline or for use on the road other than products typically sold in containers of less than 5 gallons. Gasoline also includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel, including a product obtained by

blending together any 1 or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel. The blending of all of the above named products, regardless of their name or characteristics, shall conclusively be presumed to have been done to produce motor fuel, unless the product obtained by the blending is entirely incapable of use as motor fuel. Gasoline also includes transmix. Gasoline does not include diesel fuel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for gasoline.

(g) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations, or deductions, in gallons.

(h) "Heating oil" means a motor fuel including dyed diesel fuel that is burned in a boiler, furnace, or stove for heating, agricultural, or industrial processing purposes.

(i) "Implement of husbandry" means and includes a farm tractor, a vehicle designed to be drawn or pulled by a farm tractor or animal, a vehicle that directly harvests farm products, and a vehicle that directly applies fertilizer, spray, or seeds to a farm field. Implement of husbandry does not include a motor vehicle licensed for use on the public roads or highways of this state.

(j) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. However, import does not include bringing motor fuel into this state in the fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle. Motor fuel delivered into this state from outside of this state by or for the seller constitutes an import by the seller, and motor fuel delivered into this state from out of this state by or for the purchaser constitutes an import by the purchaser.

(k) "Importer" means a person who imports motor fuel into this state.

(*l*) "Import verification number" means the number assigned by the department to an individual delivery of motor fuel by a transport truck, tank wagon, marine vessel, or rail car in response to a request for a number from an importer or transporter carrying motor fuel into this state for the account of an importer.

(m) "In this state" means the area within the borders of this state, including all territories within the borders owned by, held in trust by, or added to the United States of America.

(n) "Invoiced gallons" means the number of gallons actually billed on an invoice.

207.1004 Definitions; K to P.

Sec. 4. As used in this act:

(a) "Kerosene" means all grades of kerosene, including, but not limited to, the 2 grades of kerosene, No. 1-K and No. 2-K, commonly known as K-1 kerosene and K-2 kerosene respectively, described in American society for testing and materials specifications D-3699, in effect on January 1, 1999, and kerosene-type jet fuel described in American society for testing and materials specification D-1655 and military specifications MIL-T-5624r and MIL-T-83133d (grades jp-5 and jp-8), and any successor internal revenue service rules or regulations, as the specification for kerosene and kerosene-type jet fuel. Kerosene does not include an excluded liquid.

(b) "Liquid" means any substance that is liquid in excess of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(c) "Motor fuel" means gasoline, diesel fuel, kerosene, a mixture of gasoline, diesel fuel, or kerosene, or a mixture of gasoline, diesel fuel, or kerosene and any other substance.

(d) "Motor vehicle" means a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's mobile use on the public roads or highways of this state. Motor vehicle does not include any of the following:

(*i*) An implement of husbandry.

(*ii*) A train or other vehicle operated exclusively on rails.

(*iii*) Machinery designed principally for off-road use and not licensed for on-road use.

(*iv*) A stationary engine.

(e) "Net gallons" means the remaining product, after all considerations and deductions have been made, measured in gallons, corrected to a temperature of 60 degrees Fahrenheit, 13 degrees Celsius, and a pressure of 14.7 pounds per square inch, the ultimate end amount.

(f) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which may be used as a fuel or fuel supplement.

(g) "Permissive supplier" means a person who may not be subject to the taxing jurisdiction of this state but who does meet both of the following requirements:

(*i*) Is a position holder in a federally registered terminal located outside of this state, or a person who acquires from a position holder motor fuel in an out-of-state terminal in a transaction that otherwise qualifies as a 2-party exchange under this act.

(*ii*) Is registered under section 4101 of the internal revenue code for transactions in motor fuel in the bulk transfer/terminal system.

(h) "Person" means and includes an individual, cooperative, partnership, firm, association, limited liability company, limited liability partnership, joint stock company, syndicate, and corporation, both private and municipal, and any receiver, trustee, conservator, or any other officer having jurisdiction and control of property by law or by appointment of a court other than units of government.

(i) "Position holder" means a person who has a contract with a terminal operator for the use of storage facilities and other terminal services for motor fuel at the terminal, as reflected in the records of the terminal operator. Position holder includes a terminal operator who owns motor fuel in the terminal.

(j) "Public roads or highways" means a road, street, or place maintained by this state or a political subdivision of this state and generally open to use by the public as a matter of right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel is restricted for the purpose of construction, maintenance, repair, or reconstruction.

207.1005 Definitions; R to S.

Sec. 5. (1) As used in this act:

(a) "Rack" means a mechanism for delivering motor fuel from a refinery, a terminal, or a marine vessel into a railroad tank car, a transport truck, a tank wagon, the fuel supply tank of a marine vessel, or other means of transfer outside of the bulk transfer/terminal system.

(b) "Refiner" means a person who owns, operates, or otherwise controls a refinery within the United States.

(c) "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which motor fuel may be removed by pipeline, by marine vessel, or at a rack.

(d) "Removal" or "removed" means a physical transfer other than by evaporation, loss, or destruction of motor fuel from a terminal, manufacturing plant, customs custody, pipeline, marine vessel, or refinery that stores motor fuel.

(e) "Retail diesel dealer" means a person who sells or distributes diesel fuel to an end user in this state.

(f) "Retail marine diesel dealer" means a person who sells or distributes diesel fuel to an end user in this state for use in boats or other marine vessels.

(g) "Source state" means the state, Canadian province or territory, or foreign country from which motor fuel is imported.

(h) "Stationary engine" means a temporary or permanently affixed engine designed and used to supply power primarily for agricultural or construction work. Stationary engine includes, but is not limited to, an engine powering irrigation equipment, generators, or earth-moving equipment.

(i) "Supplier", in addition to subsection (2), means a person who meets all of the following requirements:

(*i*) Is subject to the general taxing jurisdiction of this state.

(*ii*) Is registered under section 4101 of the internal revenue code for transactions in motor fuel in the bulk transfer/terminal distribution system.

(*iii*) Is any 1 of the following:

(A) The position holder in a terminal or refinery in this state.

(B) A person who imports fuel grade ethanol into this state.

(C) A person who acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to a 2-party exchange.

(D) The position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state on its account.

(2) Supplier also means a person who either produces alcohol or alcohol derivative substances in this state or produces alcohol or alcohol derivative substances for import into a terminal in this state, or who acquires immediately upon import by transport truck, tank wagon, rail car, or marine vessel into a terminal or refinery or other storage facility that is not part of a terminal or refinery, alcohol or alcohol derivative substances. A terminal operator is not considered a supplier merely because the terminal operator handles motor fuel consigned to it within a terminal. Supplier includes a permissive supplier unless otherwise specifically provided in this act.

207.1008 Tax on motor fuel; rates; collection or payment; exception; manner and time; imposition of rate on net gallons; legislative intent.

Sec. 8. (1) Subject to the exemptions provided for in this act, tax is imposed on motor fuel imported into or sold, delivered, or used in this state at the following rates:

(a) Nineteen cents per gallon on gasoline.

(b) Fifteen cents per gallon on diesel fuel.

(2) Tax shall not be imposed under this section on motor fuel that is in the bulk transfer/terminal system.

(3) The collection, payment, and remittance of the tax imposed by this section shall be accomplished in the manner and at the time provided for in this act.

(4) Tax is also imposed at the rate described in subsection (1)(a) or (b) on net gallons of motor fuel, including transmix, lost or unaccounted for, at each terminal in this state. The tax shall be measured annually and shall apply to the net gallons of motor fuel lost or unaccounted for that are in excess of 1/2 of 1% of all net gallons of fuel removed from the terminal across the rack or in bulk.

(5) It is the intent of this act:

(a) To require persons who operate a motor vehicle on the public roads or highways of this state to pay for the privilege of using those roads or highways.

(b) To impose on suppliers a requirement to collect and remit the tax imposed by this act at the time of removal of motor fuel unless otherwise specifically provided in this act.

(c) To allow persons who pay the tax imposed by this act and who use the fuel for a nontaxable purpose to seek a refund or claim a deduction as provided in this act.

(d) That the tax imposed by this act be collected and paid at those times, in the manner, and by those persons specified in this act.

207.1030 Tax exemption.

Sec. 30. (1) Motor fuel is exempt from the tax imposed by section 8 and the tax shall not be collected by the supplier if the motor fuel:

(a) Is dyed diesel fuel or dyed kerosene.

(b) Is gasoline or diesel fuel that is sold directly by the supplier to the federal government, the state government, or a political subdivision of the state for use in a motor vehicle owned and operated or leased and operated by the federal or state government or a political subdivision of the state.

(c) Is sold directly by the supplier to a nonprofit, private, parochial, or denominational school, college, or university and is used in a school bus owned and operated or leased and operated by the educational institution that is used in the transportation of students to and from the institution or to and from school functions authorized by the administration of the institution.

(d) Is fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper under any of the following circumstances:

(*i*) The motor fuel is exported by a supplier who is licensed in the destination state.

(*ii*) Until December 31, 2000, the motor fuel is sold by a supplier to a licensed exporter for immediate export.

(*iii*) The motor fuel is sold by a supplier to another person for immediate export to a state for which the destination state fuel tax has been paid to the supplier who is licensed to remit tax to that destination state.

(e) Is gasoline removed from a pipeline or marine vessel by a taxable fuel registrant with the internal revenue service as a fuel feedstock user.

(f) Is motor fuel that is sold for use in aircraft but only if the purchaser paid the tax imposed on that fuel under the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, and the purchaser is registered under section 94 if required to be registered under that section.

(2) Motor fuel is exempt from the tax imposed by section 8 if it is acquired by an end user outside of this state and brought into this state in the fuel supply tank of a motor vehicle that is not a commercial motor vehicle, but only if the fuel is retained within and consumed from that same fuel supply tank.

(3) A person who uses motor fuel for a taxable purpose where the tax imposed by this act was not collected shall pay to the department the tax imposed by section 8 and any applicable penalties or interest. The payment shall be made on a form or in a format prescribed by the department.

207.1037 Tax refund on motor fuel exported out of bulk plant in tank wagon; tax refund or deduction on tax-free K-1 kerosene sold through blocked pump.

Sec. 37. (1) A person may seek a refund for tax paid under this act on motor fuel that the person exported out of a bulk plant in this state in a tank wagon if proof of reporting of import to the destination state and proof of payment of the tax imposed by this act have been provided. The refund is subject to conditions established by the department.

(2) A person who is registered with the federal government under section 4101 of the internal revenue code as an ultimate vendor may apply for a refund or claim a deduction for tax paid under this act on K-1 kerosene that is sold tax-free by that person through a blocked pump if he or she meets the requirements described in section 6427 of the internal revenue code and any regulations concerning a blocked pump. The department may revoke a person's license under this act if the person allows anyone to fuel a motor vehicle from a blocked pump or allows anyone to purchase K-1 kerosene from a blocked pump for a taxable purpose. As used in this subsection, "blocked pump" means that term as defined in 65 F.R. 48.6427-10, p. 17162 (March 31, 2000).

207.1038 Sale of tax-free undyed diesel fuel; deduction.

Sec. 38. A retail diesel dealer may claim a refund for tax paid under this act on sales of undyed diesel fuel in amounts of 100 gallons or less sold tax-free for a nontaxable purpose. If a sale of undyed diesel fuel for a nontaxable purpose exceeds 100 gallons, tax shall be charged and collected by the retail diesel dealer, and the end user may file a claim for a refund. A sale for a nontaxable purpose shall meet the invoicing requirement of the department.

207.1092 Retail marine diesel dealer license; fee; filing; report; payment date; waiver.

Sec. 92. (1) A person shall not deliver diesel fuel into the fuel supply tank of an end user's boat or other marine vessel or make a bulk delivery of diesel fuel to an unlicensed end user unless licensed as a retail marine diesel dealer under this act.

(2) The fee for a retail marine diesel dealer license is $50.00.

(3) A retail marine diesel dealer shall file with the department on forms or in a format prescribed by the department a quarterly report containing the information the department requires as reasonably necessary for the department to determine the amount of diesel fuel tax due. A licensed retail marine diesel dealer shall report the amount of dyed diesel fuel sold for a taxable purpose.

(4) The report shall be filed and the tax paid to the department on or before the twentieth day of the month following the close of the reporting period.

(5) The department may waive the requirement for filing a report under this section.

207.1121 Dyed diesel fuel or other exempt fuel; use.

Sec. 121. A person shall not sell or use or hold for sale or use dyed diesel fuel or other exempt fuel, including, but not limited to, excluded liquid, undyed diesel fuel that is repackaged into a container that holds 55 gallons or less, or aviation, aircraft, or jet fuel, for any use that the person knows or has reason to know is a taxable use of the diesel fuel under this act or the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

207.1122 Dyed diesel fuel; use in motor vehicle on public roads or highways; exception; penalty.

Sec. 122. (1) A person shall not operate or maintain a motor vehicle on the public roads or highways of this state with dyed diesel fuel in the vehicle's fuel supply tank.

(2) This section does not apply to dyed diesel fuel used in any of the following:

(a) A motor vehicle owned and operated or leased and operated by the federal or state government or a political subdivision of this state.

(b) A motor vehicle used exclusively by the American red cross.

(c) An implement of husbandry.

(d) A passenger vehicle that has a capacity of 10 or more and that operates over regularly traveled routes expressly provided for in 1 or more of the following that applies to the passenger vehicle:

(*i*) A certificate of authority issued by the state transportation department.

(*ii*) A municipal franchise.

(*iii*) A municipal license.

(*iv*) A municipal permit.

(*v*) A municipal agreement.

(*vi*) A municipal grant.

(3) An owner, operator, or driver of a vehicle who uses dyed diesel fuel on the public roads or highways of this state is subject to a civil penalty of $200.00 for each of the first 2 violations within a 12-month period. For a third violation within a 12-month period, and for each subsequent violation thereafter, the person is subject to a civil penalty of $5,000.00. An owner, operator, or driver of a motor vehicle who knowingly violates the prohibition against the sale or use of dyed diesel fuel upon the public roads or highways of this state is subject to a civil penalty equal to that imposed by section 6714 of the internal revenue code.

Repeal of §§ 207.1090 and 207.1091.

Enacting section 1. Sections 90 and 91 of the motor fuel tax act, 2000 PA 403, MCL 207.1090 and 207.1091, are repealed.

Conditional effective date.

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

(a) House Bill No. 5734.

(b) House Bill No. 5736.

Effective date.

Enacting section 3. This amendatory act takes effect April 1, 2003.

Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5734, referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 667, Eff. Apr. 1, 2003.

House Bill No. 5736, also referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 669, Eff. Mar. 31, 2003.

[No. 669]

(HB 5736)

AN ACT to amend 1937 PA 94, entitled "An act to provide for the levy, assessment and collection of a specific excise tax on the storage, use or consumption in this state of

tangible personal property and certain services; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending sections 2, 3, 4, and 4k (MCL 205.92, 205.93, 205.94, and 205.94k), sections 2 and 3 as amended by 2002 PA 511, section 4 as amended by 2002 PA 456, and section 4k as amended by 2000 PA 200.

The People of the State of Michigan enact:

205.92 Definitions.

Sec. 2. As used in this act:

(a) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.

(c) "Storage" means a keeping or retention of property in this state for any purpose after the property loses its interstate character.

(d) "Seller" means the person from whom a purchase is made and includes every person selling tangible personal property or services for storage, use, or other consumption in this state. If, in the opinion of the department, it is necessary for the efficient administration of this act to regard a salesperson, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates or from whom he or she obtains tangible personal property or services sold by him or her for storage, use, or other consumption in this state, irrespective of whether or not he or she is making the sales on his or her own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so consider him or her, and may consider the dealer, distributor, supervisor, or employer as the seller for the purpose of this act.

(e) "Purchase" means to acquire for a consideration, whether the acquisition is effected by a transfer of title, of possession, or of both, or a license to use or consume; whether the transfer is absolute or conditional, and by whatever means the transfer is effected; and whether consideration is a price or rental in money, or by way of exchange or barter.

(f) "Price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state, without a deduction for the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense. The price of tangible personal property, for affixation to real estate, withdrawn by a construction contractor from inventory available for sale to others or made available by publication or price list as a finished product for sale to others is the finished goods inventory value of the property. If a construction contractor manufactures, fabricates, or assembles tangible personal property before affixing it to real estate, the price of the property is equal to the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property but does not include the cost of labor to cut, bend, assemble, or attach property at the site of affixation to real estate. For the purposes of the preceding sentence, for property withdrawn by a construction contractor from inventory available for sale to

others or made available by publication or price list as a finished product for sale to others, the materials cost of the property means the finished goods inventory value of the property. For purposes of this subdivision, "manufacture" means to convert or condition tangible personal property by changing the form, composition, quality, combination, or character of the property and "fabricate" means to modify or prepare tangible personal property for affixation or assembly. The price of a motor vehicle, trailer coach, or titled watercraft is the full retail price of the motor vehicle, trailer coach, or titled watercraft being purchased. The tax collected by the seller from the consumer or lessee under this act is not considered part of the price, but is a tax collection for the benefit of the state, and a person other than the state shall not derive a benefit from the collection or payment of this tax. A price does not include an assessment imposed under the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL 141.861 to 141.867, the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism marketing act, 1989 PA 244, MCL 141.891 to 141.900, 1991 PA 180, MCL 207.751 to 207.759, or the community convention or tourism marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was added to charges for rooms or lodging otherwise subject, pursuant to section 3a, to tax under this act. Price does not include specific charges for technical support or for adapting or modifying prewritten, standard, or canned computer software programs to a purchaser's needs or equipment if the charges are separately stated and identified. The tax imposed under this act shall not be computed or collected on rental receipts if the tangible personal property rented or leased has previously been subjected to a Michigan sales or use tax when purchased by the lessor.

(g) "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes a person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

(h) "Business" means all activities engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect.

(i) "Department" means the revenue division of the department of treasury.

(j) "Tax" includes all taxes, interest, or penalties levied under this act.

(k) "Tangible personal property" includes computer software offered for general use by the public or software modified or adapted to the user's needs or equipment by the seller, only if the software is available from a seller of software on an as is basis or as an end product without modification or adaptation. Tangible personal property does not include computer software originally designed for the exclusive use and special needs of the purchaser. As used in this subdivision, "computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result.

(*l*) "Tangible personal property" beginning September 20, 1999, includes electricity, natural or artificial gas, or steam and also the transmission and distribution of electricity used by the consumer or user of the electricity, whether the electricity is purchased from the delivering utility or from another provider.

(m) "Tangible personal property" does not include a commercial advertising element if the commercial advertising element is used to create or develop a print, radio, television, or other advertisement, the commercial advertising element is discarded or returned to the provider after the advertising message is completed, and the commercial advertising element is custom developed by the provider for the purchaser. As used in this subdivision, "commercial advertising element" means a negative or positive photographic image, an

audiotape or videotape master, a layout, a manuscript, writing of copy, a design, artwork, an illustration, retouching, and mechanical or keyline instructions. "Tangible personal property" includes black and white or full color process separation elements, an audiotape reproduction, or a videotape reproduction.

(n) "Textiles" means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillowcases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

(o) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(p) "Qualified commercial motor vehicle" means that term as defined in section 1(i), (j), and (k) of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(q) "Diesel fuel" means that term as defined in section 2(p) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

205.93 Tax rate; penalties and interest; presumption; collection; price tax base; exemptions; services, information, or records.

Sec. 3. (1) There is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified in section 3a or 3b. Penalties and interest shall be added to the tax if applicable as provided in this act. For the purpose of the proper administration of this act and to prevent the evasion of the tax, it is presumed that tangible personal property purchased is subject to the tax if brought into the state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state. Beginning April 1, 2003, as used in this subsection and section 4(1)(a), the term "price" means, with respect to diesel fuel used by interstate motor carriers in a qualified commercial motor vehicle, the statewide average retail price of a gallon of self-serve diesel fuel as determined and certified quarterly by the department, rounded down to the nearest 1/10 of a cent. This use tax on diesel fuel used by interstate motor carriers in a qualified commercial motor vehicle shall be collected under the international fuel tax agreement.

(2) The tax imposed by this section for the privilege of using, storing, or consuming a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft shall be collected before the transfer of the vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft, except a transfer to a licensed dealer or retailer for purposes of resale that arises by reason of a transaction made by a person who does not transfer vehicles, ORVs, manufactured housing, aircraft, snowmobiles, or watercraft in the ordinary course of his or her business done in this state. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on manufactured housing shall be collected by the department of consumer and industry services, mobile home commission, or its agent before the transfer of the certificate of title. The tax on an aircraft shall be collected by the department of treasury. Notwithstanding any limitation contained in section 2 and except as provided in this subsection, the price tax base of any vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft subject to taxation under this act shall be not less than its retail dollar value at the time of acquisition as fixed pursuant to rules promulgated by the department. The price tax base of a new or previously owned

car or truck held for resale by a dealer and that is not exempt under section 4(1)(c) is the purchase price of the car or truck multiplied by 2.5% plus $30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner.

(3) The following transfers or purchases are not subject to use tax:

(a) A transaction or a portion of a transaction if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

(b) A transaction or a portion of a transaction if the transfer is a gift to a beneficiary in the administration of an estate.

(c) If a vehicle, ORV, manufactured housing, aircraft, snowmobile, or watercraft that has once been subjected to the Michigan sales or use tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business and the beneficial ownership is not changed.

(d) If an insurance company licensed to conduct business in this state acquires ownership of a late model distressed vehicle as defined in section 12a of the Michigan vehicle code, 1949 PA 300, MCL 257.12a, through payment of damages in response to a claim or when the person who owned the vehicle before the insurance company reacquires ownership from the company as part of the settlement of a claim.

(4) The department may utilize the services, information, or records of any other department or agency of state government in the performance of its duties under this act, and other departments or agencies of state government are required to furnish those services, information, or records upon the request of the department.

205.94 Exemptions.

Sec. 4. (1) The tax levied under this act does not apply to the following, subject to subsection (2):

(a) Property sold in this state on which transaction a tax is paid under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, if the tax was due and paid on the retail sale to a consumer. Beginning April 1, 2003, in lieu of the exclusion in this subdivision, an interstate motor carrier shall be entitled to a credit under this act for 6% of the price of diesel fuel purchased in this state and used in a qualified commercial motor vehicle. This credit shall be claimed on the returns filed under the international fuel tax agreement.

(b) Property, the storage, use, or other consumption of which this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state.

(c) Property purchased for resale, demonstration purposes, or lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school shall be certified for driving education and shall not be reassigned for personal use by the school's administrative personnel. For a dealer selling a new car or truck, exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style according to the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes. Property purchased for resale includes promotional merchandise transferred pursuant to a redemption offer to a person located outside this state or any packaging material, other than promotional merchandise, acquired for use in fulfilling a redemption offer or rebate to a person located outside this state.

(d) Property that is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days. Beginning April 1, 2003, this subdivision does not apply to diesel fuel that is used, stored, or consumed in this state by interstate motor carriers in qualified commercial vehicles.

(e) Property the sale or use of which was already subjected to a sales tax or use tax equal to, or in excess of, that imposed by this act under the law of any other state or a local governmental unit within a state if the tax was due and paid on the retail sale to the consumer and the state or local governmental unit within a state in which the tax was imposed accords like or complete exemption on property the sale or use of which was subjected to the sales or use tax of this state. If the sale or use of property was already subjected to a tax under the law of any other state or local governmental unit within a state in an amount less than the tax imposed by this act, this act shall apply, but at a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed. Beginning April 1, 2003, this subdivision does not apply to diesel fuel that is used, stored, or consumed in this state by interstate motor carriers in qualified motor vehicles.

(f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or horticultural products for further growth. At the time of the transfer of that tangible personal property, the transferee shall sign a statement, in a form approved by the department, stating that the property is to be used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. The statement shall be accepted by the courts as prima facie evidence of the exemption. This exemption includes agricultural land tile, which means fired clay or perforated plastic tubing used as part of a subsurface drainage system for land used in the production of agricultural products as a business enterprise and includes a portable grain bin, which means a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts. This exemption does not include transfers of food, fuel, clothing, or similar tangible personal property for personal living or human consumption. This exemption does not include tangible personal property permanently affixed and becoming a structural part of real estate.

(g) Property or services sold to the United States, an unincorporated agency or instrumentality of the United States, an incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American red cross and its chapters or branches, this state, a department or institution of this state, or a political subdivision of this state.

(h) Property or services sold to a school, hospital, or home for the care and maintenance of children or aged persons, operated by an entity of government, a regularly organized church, religious, or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of this state, if not operated for profit, and if the income or benefit from the operation does not inure, in whole or in part, to an individual or private shareholder, directly or indirectly, and if the activities of the entity or agency are carried on exclusively for the benefit of the public at large and are not limited to the advantage, interests, and benefits of its members or a restricted group. The tax levied does not apply to property or services sold to a parent cooperative preschool. As used in this subdivision, "parent cooperative preschool" means a nonprofit, nondiscriminatory educational institution, maintained as a community service and administered by parents of children currently

enrolled in the preschool that provides an educational and developmental program for children younger than compulsory school age, that provides an educational program for parents, including active participation with children in preschool activities, that is directed by qualified preschool personnel, and that is licensed by the department of consumer and industry services pursuant to 1973 PA 116, MCL 722.111 to 722.128.

(i) Property or services sold to a regularly organized church or house of religious worship except the following:

(*i*) Sales in which the property is used in activities that are mainly commercial enterprises.

(*ii*) Sales of vehicles licensed for use on the public highways other than a passenger van or bus with a manufacturer's rated seating capacity of 10 or more that is used primarily for the transportation of persons for religious purposes.

(j) A vessel designed for commercial use of registered tonnage of 500 tons or more, if produced upon special order of the purchaser, and bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of a vessel of 500 tons or more engaged in interstate commerce.

(k) Property purchased for use in this state where actual personal possession is obtained outside this state, the purchase price or actual value of which does not exceed $10.00 during 1 calendar month.

(*l*) A newspaper or periodical classified under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or as a controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and a copyrighted motion picture film. Tangible personal property used or consumed in producing a copyrighted motion picture film, a newspaper published more than 14 times per year, or a periodical published more than 14 times per year, and not becoming a component part of that film, newspaper, or periodical is subject to the tax. After December 31, 1993, tangible personal property used or consumed in producing a newspaper published 14 times or less per year or a periodical published 14 times or less per year and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is exempt from the tax under this subdivision. A claim for a refund for taxes paid before January 1, 1999 under this subdivision shall be made before June 30, 1999. For purposes of this subdivision, tangible personal property that becomes a component part of a newspaper or periodical and consequently not subject to tax, includes an advertising supplement inserted into and circulated with a newspaper or periodical that is otherwise exempt from tax under this subdivision, if the advertising supplement is delivered directly to the newspaper or periodical by a person other than the advertiser, or the advertising supplement is printed by the newspaper or periodical.

(m) Property purchased by persons licensed to operate a commercial radio or television station if the property is used in the origination or integration of the various sources of program material for commercial radio or television transmission. This subdivision does not include a vehicle licensed and titled for use on public highways or property used in the transmitting to or receiving from an artificial satellite.

(n) A person who is a resident of this state who purchases an automobile in another state while in the military service of the United States and who pays a sales tax in the state where the automobile is purchased.

(o) A vehicle for which a special registration is secured in accordance with section 226(12) of the Michigan vehicle code, 1949 PA 300, MCL 257.226.

(p) A hearing aid, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for any part of the human body, or used to assist the disabled person to lead a reasonably normal life when the tangible personal property is purchased on a written prescription or order issued by a health professional as defined by section 4 of former 1974 PA 264, or section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501, or eyeglasses prescribed or dispensed to correct the person's vision by an ophthalmologist, optometrist, or optician.

(q) Water when delivered through water mains or in bulk tanks in quantities of not less than 500 gallons.

(r) A vehicle not for resale used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

(s) Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908.

(t) Tangible real or personal property donated by a manufacturer, wholesaler, or retailer to an organization or entity exempt pursuant to subdivision (h) or (i) or section 4a(a) or (b) of the general sales tax act, 1933 PA 167, MCL 205.54a.

(u) The storage, use, or consumption by a domestic air carrier of an aircraft purchased after December 31, 1992 but before October 1, 1996 for use solely in the transport of air cargo that has a maximum certificated takeoff weight of at least 12,500 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

(v) The storage, use, or consumption by a domestic air carrier of an aircraft purchased after June 30, 1994 but before October 1, 1996 that is used solely in the regularly scheduled transport of passengers. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

(w) The storage, use, or consumption by a domestic air carrier of an aircraft, other than an aircraft described under subdivision (v), purchased after December 31, 1994 but before October 1, 1996, that has a maximum certificated takeoff weight of at least 12,500 pounds and that is designed to have a maximum passenger seating configuration of more than 30 seats and used solely in the transport of passengers. For purposes of this subdivision, the term "domestic air carrier" is limited to entities engaged in the commercial transport for hire of cargo or entities engaged in the commercial transport of passengers as a business activity.

(x) The storage, use, or consumption of an aircraft by a domestic air carrier after September 30, 1996 for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers, that has a maximum certificated takeoff weight of at least 6,000 pounds. For purposes of this subdivision, the term "domestic air carrier" is limited to a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity. The state treasurer shall estimate on January 1 each year the revenue lost by this act from the school aid fund and deposit that amount into the school aid fund from the general fund.

(y) The storage, use, or consumption of an aircraft by a person who purchases the aircraft for subsequent lease to a domestic air carrier operating under a certificate issued by the federal aviation administration under 14 C.F.R. part 121, for use solely in the regularly scheduled transport of passengers.

(z) Property or services sold to an organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code of 1986, 26 U.S.C. 501; or to a health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued before June 13, 1994 an exemption ruling letter to purchase items exempt from tax signed by the administrator of the sales, use, and withholding taxes division of the department. The department shall reissue an exemption letter after June 13, 1994 to each of those organizations that had an exemption letter that shall remain in effect unless the organization fails to meet the requirements that originally entitled it to this exemption. The exemption does not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt organization.

(aa) The use or consumption of services described in section 3a(a) or (c) or 3b by means of a prepaid telephone calling card, a prepaid authorization number for telephone use, or a charge for internet access.

(bb) The purchase, lease, use, or consumption of the following by an industrial laundry after December 31, 1997:

(*i*) Textiles and disposable products including, but not limited to, soap, paper, chemicals, tissues, deodorizers and dispensers, and all related items such as packaging, supplies, hangers, name tags, and identification tags.

(*ii*) Equipment, whether owned or leased, used to repair and dispense textiles including, but not limited to, roll towel cabinets, slings, hardware, lockers, mop handles and frames, and carts.

(*iii*) Machinery, equipment, parts, lubricants, and repair services used to clean, process, and package textiles and related items, whether owned or leased.

(*iv*) Utilities such as electric, gas, water, or oil.

(*v*) Production washroom equipment and mending and packaging supplies and equipment.

(*vi*) Material handling equipment including, but not limited to, conveyors, racks, and elevators and related control equipment.

(*vii*) Wastewater pretreatment equipment and supplies and related maintenance and repair services.

(2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

205.94k Tax inapplicable to parts and materials affixed to certain aircraft, rolling stock, and qualified truck or trailer; definitions.

Sec. 4k. (1) The tax levied under this act does not apply to parts and materials, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft owned or used by a domestic air carrier that is any of the following:

(a) An aircraft for use solely in the transport of air cargo or a combination of air cargo and passengers that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996.

(b) An aircraft that is used solely in the regularly scheduled transport of passengers.

(c) An aircraft other than an aircraft described in subdivision (b), that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996, and that is designed to have a maximum passenger seating configuration of more than 30 seats and is used solely in the transport of passengers.

(2) For taxes levied after December 31, 1992, the tax levied under this act does not apply to the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier. A refund for taxes paid before January 1, 1997 shall not be paid under this subsection if the refund claim is made after June 30, 1997.

(3) For taxes levied after December 31, 1996 and before May 1, 1999, the tax levied under this act does not apply to the product of the out-of-state usage percentage and the price otherwise taxable under this act of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased, rented, or leased in this state by an interstate fleet motor carrier and used in interstate commerce.

(4) As used in this section:

(a) "Domestic air carrier" means a person engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

(b) "Interstate fleet motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(c) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the taxpayer and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the taxpayer. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(d) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(e) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) House Bill No. 5734.

(b) House Bill No. 5735.

Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5734, referred to in enacting section 1, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 667, Eff. Apr. 1, 2003.

House Bill No. 5735, also referred to in enacting section 1, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 668, Eff. Apr. 1, 2003.

[No. 670]

(HB 6510)

AN ACT to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending sections 20e and 34 (MCL 791.220e and 791.234), section 20e as amended by 1995 PA 20 and section 34 as amended by 1999 PA 191.

The People of the State of Michigan enact:

791.220e Scott correctional facility; western Wayne correctional facility; capacity limits; increase.

Sec. 20e. (1) Except as provided in subsection (2), not more than 880 prisoners shall be housed at the Scott correctional facility and not more than 925 prisoners shall be housed at the western Wayne correctional facility.

(2) If a new housing unit is constructed within the security perimeter of either facility listed in subsection (1), the capacity limits listed in subsection (1) for that facility are increased by the designated capacity of the new housing unit.

791.234 Prisoners subject to jurisdiction of parole board; indeterminate and other sentences; termination of sentence; interview; release on parole; discretion of parole board; appeal to circuit court; cooperation with law enforcement by prisoner violating § 333.7401; conviction before effective date of amendatory act; definitions.

Sec. 34. (1) Except as provided in section 34a, a prisoner sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years other than a prisoner subject to disciplinary time is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted, less good time and disciplinary credits, if applicable.

(2) Except as provided in section 34a, a prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a state correctional facility with a minimum in terms of years is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted.

(3) If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the

original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

(4) If a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

(5) If a prisoner other than a prisoner subject to disciplinary time has 1 or more consecutive terms remaining to serve in addition to the term he or she is serving, the parole board may terminate the sentence the prisoner is presently serving at any time after the minimum term of the sentence has been served.

(6) A prisoner under sentence for life, other than a prisoner sentenced for life for murder in the first degree or sentenced for life for a violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, who has served 10 calendar years of the sentence in the case of a prisoner sentenced for a crime committed before October 1, 1992, or, except as provided in subsection (10), who has served 20 calendar years of the sentence in the case of a prisoner sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7401, who has another conviction for a serious crime, or, except as provided in subsection (10), who has served 17-1/2 calendar years of the sentence in the case of a prisoner sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7401, who does not have another conviction for a serious crime, or who has served 15 calendar years of the sentence in the case of a prisoner sentenced for a crime committed on or after October 1, 1992, is subject to the jurisdiction of the parole board and may be released on parole by the parole board, subject to the following conditions:

(a) At the conclusion of 10 calendar years of the prisoner's sentence and thereafter as determined by the parole board until the prisoner is paroled, discharged, or deceased, and in accordance with the procedures described in subsection (7), 1 member of the parole board shall interview the prisoner. The interview schedule prescribed in this subdivision applies to all prisoners to whom this subsection is applicable, regardless of the date on which they were sentenced.

(b) In addition to the interview schedule prescribed in subdivision (a), the parole board shall review the prisoner's file at the conclusion of 15 calendar years of the prisoner's sentence and every 5 years thereafter until the prisoner is paroled, discharged, or deceased. A prisoner whose file is to be reviewed under this subdivision shall be notified of the upcoming file review at least 30 days before the file review takes place and shall be allowed to submit written statements or documentary evidence for the parole board's consideration in conducting the file review.

(c) A decision to grant or deny parole to a prisoner so sentenced shall not be made until after a public hearing held in the manner prescribed for pardons and commutations in sections 44 and 45. Notice of the public hearing shall be given to the sentencing judge, or

the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing. The written objections shall be made part of the prisoner's file.

(d) A parole granted under this subsection shall be for a period of not less than 4 years and subject to the usual rules pertaining to paroles granted by the parole board. A parole ordered under this subsection is not valid until the transcript of the record is filed with the attorney general whose certification of receipt of the transcript shall be returnable to the office of the parole board within 5 days. Except for medical records protected under section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner granted a parole under this subsection is a public record.

(e) A parole shall not be granted under this subsection in the case of a prisoner who is otherwise prohibited by law from parole consideration. In such cases the interview procedures in section 44 shall be followed.

(7) An interview conducted under subsection (6)(a) is subject to both of the following requirements:

(a) The prisoner shall be given written notice, not less than 30 days before the interview date, stating that the interview will be conducted.

(b) The prisoner may be represented at the interview by an individual of his or her choice. The representative shall not be another prisoner. A prisoner is not entitled to appointed counsel at public expense. The prisoner or representative may present relevant evidence in favor of holding a public hearing as described in subsection (6)(b).

(8) In determining whether a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for life before October 1, 1998 is to be released on parole, the parole board shall consider all of the following:

(a) Whether the violation was part of a continuing series of violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

(b) Whether the violation was committed by the individual in concert with 5 or more other individuals.

(c) Any of the following:

(*i*) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know was organized, in whole or in part, to commit violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(*ii*) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had reason to know committed violations of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and whether the violation for which the individual was convicted was committed to further the interests of that entity.

(*iii*) Whether the violation was committed in a drug-free school zone.

(*iv*) Whether the violation involved the delivery of a controlled substance to an individual less than 17 years of age or possession with intent to deliver a controlled substance to an individual less than 17 years of age.

(9) Except as provided in section 34a, a prisoner's release on parole is discretionary with the parole board. The action of the parole board in granting a parole is appealable by

the prosecutor of the county from which the prisoner was committed or the victim of the crime for which the prisoner was convicted. The appeal shall be to the circuit court in the county from which the prisoner was committed, by leave of the court.

(10) If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (6) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(*i*) of the public health code, 1978 PA 368, MCL 333.7401, has cooperated with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (6), 2-1/2 years earlier than the time otherwise indicated in subsection (6). The prisoner is considered to have cooperated with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court shall include its determination in the judgment of sentence.

(11) An individual convicted of violating or conspiring to violate section 7401(2)(a)(*ii*) or 7403(2)(a)(*ii*) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

(12) An individual convicted of violating or conspiring to violate section 7401(2)(a)(*iii*) or 7403(2)(a)(*iii*) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection is eligible for parole after serving the minimum of each sentence imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.

(13) An individual convicted of violating or conspiring to violate section 7401(2)(a)(*iv*) or 7403(2)(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of section 7401(2)(a)(*i*) to (*iv*) or section 7403(2)(a)(*i*) to (*iv*) is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(*iv*) or 7403(2)(a)(*iv*). This subsection does not apply if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

(14) The parole board shall provide notice to the prosecuting attorney of the county in which the individual was convicted before granting parole to the individual under subsection (11), (12), or (13).

(15) As used in this section:

(a) "Serious crime" means violating or conspiring to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years, or an offense against a person in violation of section 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

(b) "State correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department, and includes a youth correctional facility operated under section 20g by the department or a private vendor.

Effective date.

Enacting section 1. This amendatory act takes effect March 1, 2003.

Conditional effective date.

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

(a) House Bill No. 5394.

(b) House Bill No. 5395.

This act is ordered to take immediate effect.
Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5394, referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 665, Eff. Mar. 1, 2003.

House Bill No. 5395, also referred to in enacting section 2, was filed with the Secretary of State December 26, 2002, and became P.A. 2002, No. 666, Eff. Mar. 1, 2003.

[No. 671]

(SB 616)

AN ACT to authorize the state administrative board to convey, exchange, or purchase certain parcels of property in Jackson county; to authorize the department of natural resources to convey certain property in Ottawa county; to authorize the state administrative board to convey certain parcels of property in Washtenaw county; to authorize the state administrative board to convey certain property in Calhoun county; to prescribe conditions for the conveyances; to provide for disposition of the revenue from the conveyances; to provide for the disposal of certain buildings; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Conveyance of state owned property in Leoni charter township, Jackson county, to 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 354.08 acres, of which 31.11 acres will be placed in a wetland bank, and which is more particularly described as follows:

Leoni Township - Parcel # 000-09-07-201-001-00

W 1/2 OF NE 1/4 EXC THEREFROM THAT PART THEREOF LYING N AND W OF CEN OF PORTAGE RIVER ALSO S 1/2 OF NWFRL 1/4 EXC THEREFROM THAT PART THEREOF LYING N AND W OF CEN OF PORTAGE RIVER ALSO SWFRL 1/4 EXC THEREFROM THE R/W OF GRAND TRUNK RAILWAY ALSO W 1/2 OF SE 1/4 EXC THEREFROM THE R/W OF GRAND TRUNK RAILWAY ALSO SE 1/4 OF SE 1/4 SEC 7 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 section 1 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.

Conduct of sale.

Sec. 5. (1) Any sale of property authorized under section 1 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; approval by attorney general.

Sec. 6. A conveyance authorized by section 1 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 section 1 shall be approved by the department of corrections and the department of management and budget.

Net revenue.

Sec. 7. The net revenue received under section 1 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.

Conveyance of property to Ottawa county; consideration; jurisdiction; location; description.

Sec. 8. The department of natural resources, on behalf of the state, may convey to Ottawa county, for consideration of $1.00, certain property with improvements under the

jurisdiction of the department of natural resources and located in Grand Haven township, Ottawa county, Michigan, commonly referred to as rosy mound, and further described as follows:

Part of the SW 1/4 of Section 4, Town 7 North, Range 16 West, and part of Section 5, Town 7 North, Range 16 West, Grand Haven Township, Ottawa County, Michigan, described as beginning at a point on the East Line of Section 5 that is 790.00 feet North 00 degrees 07 minutes 54 seconds West of the SE corner of Section 5, thence South 89 degrees 07 minutes 23 seconds West 960.60 feet, thence South 00 degrees 07 minutes 54 seconds East 125.00 feet, thence South 89 degrees 07 minutes 23 seconds West 1,053.06 feet along the South line of the North fractional 1/2 of the South fractional 1/2 of the SE fractional 1/4, thence North 12 degrees 33 minutes 15 seconds West 3,410.00 feet along an intermediate traverse line along Lake Michigan to the North line of Government Lot 2, thence North 89 degrees 25 minutes 48 seconds East 1,364.84 feet, thence South 12 degrees 33 minutes 15 seconds East 2,477.45 feet, thence North 89 degrees 51 minutes 59 seconds East 800.00 feet, thence North 35 degrees 56 minutes 40 seconds East 682.68 feet, thence North 89 degrees 51 minutes 59 seconds East 960.00 feet to the centerline of Lakeshore Drive, thence, South 00 degrees 45 minutes 10 seconds West 183.84 feet, thence along a 17,188.178 foot radius curve to the left 522.67 feet (chord bears South 00 degrees 07 minutes 06 seconds East 522.65 feet), thence South 00 degrees 59 minutes 22 seconds East 73.47 feet, the preceding 3 courses along the centerline of Lakeshore Drive, thence, South 89 degrees 51 minutes 59 seconds West 225.00 feet along the North line of the SW 1/4 of the SW 1/4 of Section 4, thence South 00 degrees 59 minutes 22 seconds East 407.50 feet, thence North 88 degrees 28 minutes 27 seconds East 225.00 feet to the centerline of Lakeshore Drive, thence South 00 degrees 59 minutes 22 seconds East 81.02 feet along the centerline of Lakeshore Drive, thence South 89 degrees 51 minutes 59 seconds West 1,318.07 feet to the West line of Section 4, thence South 00 degrees 07 minutes 54 seconds East 57.00 feet to the point of beginning. Together with all land lying between the intermediate traverse line and the waters edge of Lake Michigan. Containing 160 acres of land more or less except that part taken, used or deeded for Lakeshore Drive.

Provisions.

Sec. 9. The conveyance authorized by section 8 shall provide for all of the following:

(a) The property shall be used exclusively for public park purposes and if any fee, term, or condition for the use of the property is imposed on members of the public, or if any of those fees, terms, or conditions are waived for use of this property, resident and nonresident members of the public shall be subject to the same fees, terms, conditions, and waivers.

(b) Upon termination of the use described in subdivision (a) or use for any other purpose, the state may reenter and repossess the property, terminating the grantee's estate in the property.

(c) If the grantee disputes the state's exercise of its right of reentry and fails to promptly deliver possession of the property to the state, the attorney general, on behalf of the state, may bring an action to quiet title to, and regain possession of, the property.

Disposition of revenue; quitclaim deed; conveyance of mineral rights; royalty interest.

Sec. 10. (1) The revenue received from the conveyance under sections 8 and 9 shall be deposited in the state treasury and credited to the general fund.

(2) The conveyance authorized by sections 8 and 9 shall be by quitclaim deed approved by the attorney general.

(3) The state shall convey the mineral rights to the property conveyed under sections 8 and 9. However, the state shall retain a nonparticipating 1/6 minimum royalty interest. Any revenue derived from the royalty interest shall be deposited in the natural resources trust fund.

Demolition of building.

Sec. 11. (1) The department of management and budget may demolish, dismantle, or otherwise dispose of the following surplus building: department of management and budget building M109 "Central Chiller" located at 615 W. Allegan.

(2) The department of management and budget may use unexpended funds appropriated in 2002 PA 518, the capital outlay budget for fiscal year 2002-2003, for demolition of the facility described in this section.

Conveyance, exchange, or purchase of certain state-owned property located in Blackman township; jurisdiction; description; consideration; approval by state administrative board; exchange; quitclaim deed; reservation of mineral rights; expiration of authority to convey property.

Sec. 12. (1) The state administrative board, on behalf of the state, may convey, exchange, or purchase certain state owned property under the jurisdiction of the department of corrections and privately owned property located in Blackman township, Jackson county, Michigan, and described as those lands separated from the main campus of southern Michigan prison or from the private owner's main parcel of land by the man-made course change from the old Grand river and old Portage river to the new Grand river drain and the Portage river drain respectively, for consideration as determined pursuant to subsection (3).

(2) The property to be conveyed, exchanged, or purchased shall be properties that contribute to cleaning up the property lines along the Grand river drain and the Portage river drain, located in Blackman township, Jackson county, and lying adjacent to the southern Michigan prison campus and shall be more particularly described based on the 2001-2002 survey by the polaris surveying company.

(3) If the parties mutually determine based on tax records or a market study of recent sales that 2 properties are approximately of equal value, an exchange under this section may proceed subject to approval by the state administrative board. If the parties either do not agree, or agree that the properties are not of equal value, or the transaction is solely a conveyance or purchase, then the parties shall select a qualified appraiser who shall determine the value of the properties, with the determination being binding on the parties. If the values for the exchange parcels, as determined by a qualified appraiser, are within 10% of each other, the exchange shall proceed without any further consideration. If the values of the properties are 11% or more apart, the parties may agree that further consideration be given to the owner of the higher valued property or that more or less land may be exchanged. The parties to the exchange shall pay for any survey, environmental studies, and actions required to clear title, and title commitment fees, if any, for the parcel they are receiving in exchange or by purchase.

(4) A conveyance authorized by this section shall be by quitclaim deed approved by the attorney general. The conveyance shall reserve the mineral rights to the grantors.

(5) The authority to convey property under this section expires 5 years after the date on which this act takes effect.

Conveyance of certain state owned property known as Ypsilanti regional psychiatric hospital; jurisdiction; location; description; appraisal; conduct of sale; quitclaim deed; adjustment of descriptions; disposition of revenue; net revenue; relocation of residents.

Sec. 13. (1) The state administrative board, on behalf of the state and subject to the terms stated in this section, may convey for not less than fair market value, except for a parcel of approximately 10.667 acres to be conveyed under section 14, all or portions of certain state owned property now under the jurisdiction of the department of community health, known as the Ypsilanti regional psychiatric hospital, located in the city of Ypsilanti, Washtenaw county, Michigan, and more particular described as follows:

(a) Parcel #1: All of section 2, t4s, r6e, Washtenaw county, Michigan, lying westerly of interstate highway us-23 except the north 1,200 feet thereof. The above-described parcel contains approximately 342 acres, subject to survey, and to all easements and restrictions of record, if any.

(b) Parcel #2: the east 1/2 of section 3, t4s, r6e, Washtenaw county, Michigan, except the north 1/2 of the northeast 1/4 of said section 3, containing approximately 302 acres, subject to survey, and to all easements and restrictions of record, if any.

(c) Parcel #3: the northwest 1/4 of section 3, t4n, r6e, Washtenaw county, Michigan, lying easterly of the Conrail railroad, containing approximately 53 acres, subject to survey, and to all easements and restrictions of record, if any.

(d) Parcel #4: beginning at the north 1/4 corner of section 11, t4s, r6e, Washtenaw county, Michigan, thence south 89 degrees 49' 45" west 1,485.77 feet, on the north line of said section 11; thence south 01 degrees 32' 29" east 948.23 feet; thence north 89 degrees 49' 45" east 490.01 feet; thence north 01 degrees 32' 29" west 239.65 feet; thence north 89 degrees 49' 45" east 998.63 feet, to the north-south 1/4 line of said section 11; thence north 01 degrees 46' 23" west 708.65 feet, on said north-south 1/4 line to the point of beginning; containing 26.88 acres, more or less, subject to survey, and to all easements and restrictions of record, if any.

(2) The fair market value of the property described in subsection (1) shall be determined by an appraisal as prepared by the state tax commission or an independent fee appraiser.

(3) Any sale of property described in subsection (1) 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.

(4) Broker services for the sale under this section 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.

(5) A notice of a sealed or oral bid, public auction sale, or use of broker negotiation services, regarding the sale of property under this section, 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.

(6) The conveyance authorized under this section shall be by quitclaim deed approved by the attorney general and shall reserve oil, gas, and mineral rights to the state.

(7) The descriptions of the parcels in subsection (1) are approximate and for purposes of the conveyance are subject to adjustments as the state administrative board or the attorney general considers necessary by survey or other legal description.

(8) The net revenue received from the sale under this section shall be deposited in the state treasury and credited to the general fund. As used in this subsection, "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.

(9) Residents of the Ypsilanti regional psychiatric hospital shall not be relocated or housed in facilities of lesser security as a result of any conveyance authorized under this section.

Conveyance of property to York township; jurisdiction; location; description; provisions; quitclaim deed; reservation of mineral rights; disposition of revenue.

Sec. 14. (1) The state administrative board, on behalf of the state, may convey to York township, for $1.00, certain property now under the jurisdiction of the department of community health and located in York township, Washtenaw county, and more specifically described as follows:

A parcel of land in the Northwest 1/4 of section 11, T4S, R6E, York Township, Washtenaw County, Michigan and more particularly described as follows: Commencing at the northwest corner of said section 11; thence N89°49'45"E 1015.98 feet, on the north line of said section 11 to the point of beginning of this description; thence N89°49'45"E 490.01 feet, on the north line of said section 11; thence S01°32'29"E 948.23 feet; thence S89°49'45"W 490.01 feet; thence N01°32'29"W 948.23 feet, to the north line of said section 11 and the point of beginning. The above described parcel contains 10.667 acres, more or less. All bearings are relative and referenced to an adjacent survey as recorded in Liber 1875, Page 575, Washtenaw County records. The above described parcel is subject to any easements and/or rights of record as they may pertain to this parcel.

(2) The conveyance authorized by this section shall provide for all of the following:

(a) The property shall be used exclusively for public recreational purposes and if any fee, term, or condition for the use of the property is imposed on members of the public, or if any of those fees, terms, or conditions are waived for use of this property, resident and nonresident members of the public shall be subject to the same fees, terms, conditions, and waivers.

(b) Upon termination of the use described in subdivision (a) or use for any other purpose, the state may reenter and repossess the property, terminating the grantee's estate in the property.

(c) If the grantee disputes the state's exercise of its right of reentry and fails to promptly deliver possession of the property to the state, the attorney general, on behalf of the state, may bring an action to quiet title to, and regain possession of, the property.

(3) The conveyance authorized by this section shall be by quitclaim deed approved by the attorney general, and shall reserve to the state all rights to oil, coal, gas, or other materials, excluding sand, gravel, clay, or other nonmetallic minerals found on, within, or under the conveyed land.

(4) The revenue received from the conveyance under this section shall be deposited in the state treasury and credited to the general fund.

Conveyance of property located in Calhoun county; description; adjustment; appraisal; quitclaim deed; reservation of mineral rights; disposition of revenue.

Sec. 15. (1) The state administrative board, on behalf of the state, may convey to the city of Springfield, in Calhoun county, for not less than fair market value, certain state owned property located in Calhoun county, Michigan, and more particularly described as:

Lots 183 and 184 of Orchard Acres No. 3, according to the plat thereof recorded in Liber 10 of Plats, Page 40, Calhoun County records.

(2) The description of the parcel in subsection (1) is approximate and for purposes of the conveyance is subject to adjustment as the state administrative board or attorney general considers necessary by survey or other legal description.

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

(4) The conveyance authorized by this section shall be by quitclaim deed approved by the attorney general and shall not reserve mineral rights to the state.

(5) The revenue received under this section shall be deposited in the state treasury and credited to the general fund.

Repeal of 1996 PA 294.

Sec. 16. 1996 PA 294 is repealed.

Conditional effective date.

Sec. 17. This act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) House Bill No. 5456.

(b) House Bill No. 5465.

This act is ordered to take immediate effect.
Approved December 25, 2002.
Filed with Secretary of State December 26, 2002.

Compiler's note: House Bill No. 5456, referred to in section 17, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 632, Eff. Dec. 26, 2002.

House Bill No. 5465, also referred to in section 17, was filed with the Secretary of State December 23, 2002, and became P.A. 2002, No. 633, Eff. Dec. 26, 2002.

[No. 672]

(HB 6079)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to

provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 16, 25, 33, 34, 44, 45, 50c, 57, 60, 64, 90c, 113, 114, 123, 125, 138, 140, 149, 150, 151, 153, 172, 173, 183, 184, 191, 192, 197a, 215, 217, 217c, 219, 219a, 220, 240, 263, 264, 287, 288, 294, 295, 298, 301, 302, 304, 305, 306, 314, 330, 331, 335, 335a, 354, 359, 368, 371, 375, 389, 393, 396, 404, 407, 408, 410, 411a, 411d, 414, 428, 429, 430, 454, 466, 478, 482, 490a, 492, 502b, 508, 509, 519, 524, 537, 538, 540c, 540d, 540f, 540g, 540h, and 561 (MCL 750.16, 750.25, 750.33, 750.34, 750.44, 750.45, 750.50c, 750.57, 750.60, 750.64, 750.90c, 750.113, 750.114, 750.123, 750.125, 750.138, 750.140, 750.149, 750.150, 750.151, 750.153, 750.172, 750.173, 750.183, 750.184, 750.191, 750.192, 750.197a, 750.215, 750.217, 750.217c, 750.219, 750.219a, 750.220, 750.240, 750.263, 750.264, 750.287, 750.288, 750.294, 750.295, 750.298, 750.301, 750.302, 750.304, 750.305, 750.306, 750.314, 750.330, 750.331, 750.335, 750.335a, 750.354, 750.359, 750.368, 750.371, 750.375, 750.389, 750.393, 750.396, 750.404, 750.407, 750.408, 750.410, 750.411a, 750.411d, 750.414, 750.428, 750.429, 750.430, 750.454, 750.466, 750.478, 750.482, 750.490a, 750.492, 750.502b, 750.508, 750.509, 750.519, 750.524, 750.537, 750.538, 750.540c, 750.540d, 750.540f, 750.540g, 750.540h, and 750.561), section 50c as added by 1994 PA 336, section 90c as amended by 2001 PA 1, section 125 as amended by 1999 PA 251, sections 215, 371, 524, 537, and 538 as amended by 1991 PA 145, section 217c as added and section 368 as amended by 1998 PA 360, section 219a as amended by 1998 PA 312, sections 263 and 264 as amended by 1997 PA 155, section 302 as amended by 1989 PA 85, section 375 as amended by 1996 PA 206, section 411a as amended by 2000 PA 370, section 411d as added by 1980 PA 490, section 502b as amended by 1991 PA 44, section 508 as amended by 1990 PA 77, section 540c as amended and section 540h as added by 1996 PA 557, section 540d as amended by 1996 PA 329, section 540f as added by 1996 PA 333, and section 540g as amended by 1998 PA 311.

The People of the State of Michigan enact:

750.16 Adulteration; drugs or medicine injurious to health; misdemeanor; penalty.

Sec. 16. A person who fraudulently adulterates, for the purpose of sale, any drug or medicine so as to render the drug or medicine injurious to health is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00.

750.25 Adulteration of butter and cream.

Sec. 25. (1) A person who possesses with intent to sell, or offer or expose for sale, or sell as butter or as cream, a product that is adulterated within the meaning of this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00.

(2) Butter is adulterated within the meaning of this section if 1 or both of the following conditions exist:

(a) The fat content is not exclusively derived from cow's milk.

(b) The butter contains less than 80% of milk fat.

(3) Cream is adulterated within the meaning of this section if 1 or more of the following conditions exist:

(a) The cream contains less than 18% of milk fat.

(b) The cream is not that portion of milk, rich in milk fat, that rises to the surface of milk on standing, or is separated from it by centrifugal force.

(c) The cream is not clean.

750.33 False advertising; penalty; excepted participants in publication.

Sec. 33. (1) A person who, with intent to sell, purchase, dispose of, or acquire merchandise, securities, service, or anything offered or sought by the person, directly or indirectly, to or from the public for sale, purchase, or distribution, or with intent to increase the consumption of merchandise, securities, service, or other thing offered or sought, or to induce the public in any manner to enter into an obligation relating to or interest in the merchandise, securities, service, or other thing offered or sought, makes, publishes, disseminates, circulates, or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated, or placed before or communicated to the public, in a newspaper or by radio broadcast, television, telephone, or telegraph or other mode of communication or publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, or communication, including communication by telephone or telegraph to 2 or more persons, or in any other way, in advertisement of any sort regarding merchandise, securities, service, or anything so offered to or sought from the public, or regarding the motive or purpose of a sale, purchase, distribution, or acquisition, which advertisement contains an assertion, representation, or statement or illustration, including statements of present or former sale price or value, which is false, deceptive, or misleading, or calculated to subject another person to disadvantage or injury through the publication of false or deceptive statements or as part of a plan or scheme with the intent, design, or purpose not to sell the merchandise, commodities, or service so advertised at the price stated therein, or otherwise communicated, or with intent not to sell the merchandise, commodities, or service so advertised is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00.

(2) Subsection (1) does not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, or circular, or of a radio station or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published, or takes part in the publication of an advertisement described in subsection (1).

(3) Subsection (1) does not apply to any person, firm, or corporation providing telephone service to subscribers as a public utility.

750.34 Advertising relating to sexual diseases.

Sec. 34. A person who advertises in his or her own name or in the name of another person, firm or pretended firm, association, or corporation or pretended corporation, in a newspaper, pamphlet, circular, periodical, or other written or printed paper, or the owner, publisher, or manager of a newspaper or periodical who permits to be published or inserted in a newspaper or periodical owned or controlled by him or her, an advertisement of the treating or curing of venereal diseases, the restoration of "lost manhood" or "lost vitality or vigor", or advertises in any manner that he or she is a specialist in diseases of the sexual organs, or diseases caused by sexual vice or masturbation, or in any diseases of like cause, or shall advertise in any manner any medicine, drug, compound, appliance, or any means whatever whereby sexual diseases of men or women may be cured or relieved, or miscarriage or abortion produced, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00.