

(h) “Income” means the money earned by the investment of the principal, including, but not limited to, interest, dividends, and gains or losses on the sale of, deposit of, or exchange of, property using invested principal amounts.

(i) “Interment” means the disposition of human remains by earth interment, entombment, or inurnment.

(j) “Mausoleum” means a building or other aboveground structure that is affixed to land and is a permanent repository for human remains.

(k) Subject to subsection (2), “merchandise” means both of the following:

(i) Cemetery burial vaults or other outside containers, grave memorials, and urns.

(ii) Items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or the final disposition of human remains, including, but not limited to, caskets, combination units, and catafalques.

(2) Merchandise does not include land, interests in land, or interests in mausoleums or columbariums that are sold by a cemetery that complies with the endowment care trust fund requirements of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

### **328.215 Definitions; N to U.**

Sec. 5. As used in this act:

(a) “Nonguaranteed price contract” means a prepaid contract under which funds received are held pursuant to an escrow agreement between a contract seller or provider and a contract buyer and are applied to the cost of the merchandise or funeral or cemetery services, which merchandise or funeral or cemetery services may be selected by the contract buyer at the time the contract is signed or as selected by a person legally authorized to procure merchandise or funeral or cemetery services at the time of death of the contract beneficiary. A nonguaranteed price contract does not obligate the contract beneficiary’s estate or the person who is legally entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to purchase specific merchandise or funeral or cemetery services which were selected before the contract beneficiary’s death and does not obligate either the contract beneficiary’s estate or the person who is entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to expend a specific amount on merchandise or funeral or cemetery services.

(b) “Person” means an individual, group of individuals, sole proprietorship, partnership, limited liability company, association, corporation, government agency, cemetery, or a combination of these legal entities.

(c) “Physical delivery and retention” means actual control and possession of merchandise that has been permanently relinquished by a contract seller or a provider, or the agent of either, to the contract buyer or the contract beneficiary. In the case of a grave memorial or urn, physical delivery and retention means that the grave memorial or urn has been permanently inscribed with the name of the person being memorialized. Physical delivery and retention does not occur if the contract seller or provider takes either of the following actions:

(i) Arranges or induces the buyer to arrange for the storage or warehousing of merchandise ordered pursuant to a prepaid contract, with or without evidence that legal title has passed.

(ii) Acquires or reacquires actual or constructive possession or control of merchandise after initial delivery to the contract buyer or contract beneficiary.

(d) “Prepaid contract” means a contract requiring payment in advance for funeral or cemetery services or merchandise, physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract. Prepaid contracts do not include a contract for the sale of merchandise or funeral or cemetery services entered into after the death of the contract beneficiary.

(e) “Principal” means the money or other consideration actually deposited in the escrow or trust accounts required by this act.

(f) “Provider” means any person who furnishes or agrees to furnish merchandise or funeral or cemetery services pursuant to a prepaid contract, whether or not that person is the contract seller. In the case of merchandise, provider means the person who arranges for delivery of the merchandise at the time of the death of the contract beneficiary and not the manufacturer of the merchandise. In the case of funeral services, provider means a person who possesses all licenses necessary to perform the funeral services specified in the prepaid contract. In the case of cemetery services, provider means a person who possesses all licenses and registrations necessary to provide the cemetery services specified in the prepaid contract.

(g) “Registrant” means a person who has registered with the department pursuant to section 6.

(h) “Urn” means a container used to preserve the ashes of a dead human body.

**328.216 Certificate of registration to sell, provide, or agree to provide merchandise or services pursuant to prepaid contract; application; fee; duration of certificate; contents of application form; renewal of registration; sworn statement or special report; expiration of certificate; reinstatement of registration; grounds for denial of registration; compliance; petition for reconsideration; hearing.**

Sec. 6. (1) A person shall not sell, provide, or agree to provide merchandise or funeral or cemetery services pursuant to a prepaid contract unless that person is registered with the department as provided in this section and has received a certificate of registration.

(2) A person desiring to receive a certificate of registration under this section shall apply upon forms provided by the department and pay an application fee of \$120.00. The original registration may be renewed. A certification of registration is valid for 3 years from the date of its issuance. An application form for original registration or renewal shall contain the following:

(a) The name and business address of the person registering.

(b) The names and addresses of persons owning 10% or more interest in the entity applying for registration.

(c) The business address where books and records pertaining to prepaid contracts shall be maintained for inspection by the department.

(d) A list of the names and addresses of any escrow agents in which funds have been or will be deposited by the registrant as well as copies of all escrow or trust agreements between a registrant and an escrow agent. The list and copies required by this subdivision shall be constantly updated. The registrant shall inform the department of any change in this list within 30 days of the change by adding to the list the name and address of any new escrow agent or by deleting from the list an escrow agent whose services are no longer being used by the registrant.

(e) A statement made under oath that the registrant has an agreement with each escrow agent with which it has deposited funds which complies with the requirements of section 7, or if the registrant is or intends to be an escrow agent for funds received in connection with a nonguaranteed price contract, a statement that the registrant will comply with the requirements of section 7.

(3) The department shall renew the registration of a person who applies for renewal upon a form provided by the department and pays an application fee of \$30.00 provided that the person has submitted the sworn statement as required by this section and the special report or sworn statement as required by section 8 at least 60 days before the expiration date printed on the certificate of registration. The certificate of registration of

a person who fails to file the sworn statement or special report required by this section shall expire on the date printed on the certificate of registration. A registrant may reinstate the registration within 60 days of its expiration by submitting the sworn statement or special report and paying a fee of \$120.00.

(4) The department may deny the registration of a person if it determines any of the following:

(a) That the person was previously registered with the department and that registration was revoked or suspended within 2 years before the date of the current application for registration.

(b) That the person was or is presently an owner with a substantial interest in the entity, partner, or employee of a person whose registration was revoked or suspended within 2 years before the date of the current application for registration and the person engaged or participated in or authorized the misconduct that was the basis for the revocation or suspension.

(c) That the person lacks good moral character as defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

(d) That the person has violated this act, article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(5) An applicant who registers with the department shall not receive a certificate of registration unless the applicant complies with the conditions in this section.

(6) A person who is denied registration by the department pursuant to this section may petition the department for reconsideration. A person seeking reconsideration is entitled to a hearing conducted in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

### **328.217 Deposit of funds with escrow agent; agreement to allow inspection and copying of records.**

Sec. 7. A registrant who deposits funds with an escrow agent under this act shall have in effect at all times an agreement under which the escrow agent has, under the following circumstances, agreed to allow inspection and copying of records maintained by it pertaining to funds held or managed by it:

(a) Upon the request by the department, to inspect or copy records pertaining to any or all funds held or managed by the escrow agent.

(b) Upon the request of the registrant or its agent, to inspect or copy records pertaining to any or all funds deposited by the registrant with the escrow agent.

(c) Upon the request of a contract buyer or a contract beneficiary to inspect or copy records pertaining to funds held or managed by the escrow agent pursuant to a prepaid contract to which the contract buyer is a party or for whose benefit it was entered into.

(d) Upon order of a court of competent jurisdiction.

### **328.218 Accounts, books, and records; special report; examination; corrective or penal action; examination, review, or audit of books and records; authorization of escrow agents to open records; statement in lieu of special report.**

Sec. 8. (1) A registrant shall keep, in this state, accurate accounts, books, and records of all transactions and accounts regulated by this act. Records shall include copies of all prepaid contracts, the dates and amounts of payments made and accepted under these

prepaid contracts, the name and address of each contract buyer, the name and address of the contract beneficiaries, the name and address of each escrow agent, the date and amount of each deposit made to an escrow agent, the total price of each contract exclusive of commission, any commission received for each contract, the date each contract is performed, canceled, or revoked, the date and amount of any refund paid to the contract buyer, and any other records as the department may require to enable it to determine whether the registrant is complying with the requirements of this act. Records shall be kept for at least 36 months after performance of all obligations of each prepaid contract or after the filing of the report that includes a prepaid contract that has been performed. Beginning on April 1, 2006 and each year thereafter, a registrant shall have available for examination by the department a statement, current as of the preceding December 31, disclosing the following information as to each unperformed prepaid funeral contract:

(a) The date of the contract and, if available, the contract number.

(b) The names of the contract buyer and the contract beneficiary.

(c) The face value of the contract. If the registrant is allowed to deposit less than the face value, the statement shall include the amount required to be on deposit with the escrow agent.

(d) Whether the contract is a guaranteed or nonguaranteed contract.

(e) Complete information on the means, provision, trust, or other vehicle that will assure fulfillment of all obligations, stating ledger and market values of the vehicle, its location, nature of investments and trustees including fees paid to trustees. A registrant who has placed funds in a commingled escrow account may satisfy this requirement by identifying the name of the escrow agent and the particular investment account or accounts in which the funds have been placed.

(2) Annually, a registrant which serves as an escrow agent or which has deposited funds with an escrow agent pursuant to section 12 shall secure a report prepared by a Michigan licensed certified public accountant pertaining to funds. The report shall be on forms provided by the department. The report shall be prepared and dated on or before July 1 of the year following the calendar year for which the report is prepared. In preparing the report, the Michigan licensed certified public accountant shall not be required to review all prepaid contracts, escrow agreements, escrow accounts, or records of the registrant, nor shall the Michigan licensed certified public accountant be required to review any receipts or deposits by the registrant of funds. The report of the Michigan licensed certified public accountant shall provide the following assurances:

(a) That, based either upon a review of the registrant's agreements with escrow agents or depositories which limit investments of the escrow funds by the escrow agents or depositories to those investments permitted by this act, or upon a review of the investments of the escrow accounts, the investment requirements of section 12 have been complied with.

(b) In the case of escrow accounts where the registrant serves as the escrow agent, that withdrawals, as detailed in the periodic statements of the depositories in which the escrow accounts are maintained, have been made in compliance with this act.

(c) In the case of escrow accounts where the registrant does not serve as the escrow agent, that, based upon a representative test sample selected upon the basis of the professional judgment of the Michigan licensed certified public accountant after considering all risks, funds have been deposited with and held by the escrow agent in accordance with this act.

(d) That no matters have come to the attention of the Michigan licensed certified public accountant during the review of escrow account investments and withdrawals that gave cause to believe that the registrant has not complied with this act, or if any matters have

come to his or her attention, the Michigan licensed certified public accountant shall include an explanation of the matters which caused the belief that the registrant has not complied with this act.

(3) The department may examine each report required by this section and if the department determines on the basis of its review that the registrant or its agent has not held or invested funds in accordance with the requirements of this act or has failed to file a report as required, the department shall take any appropriate corrective or penal action authorized by this act.

(4) The department may examine, review, or audit the books and records of a contract seller or provider pertaining to funds received in payment for prepaid contracts. An audit may include an examination of the books and financial records of the registrant as well as books and financial records of escrow agents used by the registrant. A registrant shall authorize escrow agents to open their records of the registrant accounts to the department upon request. The department may charge the registrant for the actual expenses of the examination, review, or audit but not more than \$1,000.00.

(5) For the purposes of complying with the requirements of this section, a registrant who has not sold, provided, or agreed to provide merchandise or funeral or cemetery services in accordance with a prepaid contract and who has no obligations with respect to an outstanding prepaid contract may submit a sworn statement that a prepaid contract has not been sold, provided, or agreed to and there are no obligations outstanding. The department shall accept the statement in lieu of the report.

(6) Any books or records regarding any prepaid contract entered into before the effective date of the amendatory act that added this subsection that were in compliance with applicable law are considered in compliance with this act.

### **328.219 Notice of purchase or assignment of business operations or prepaid contracts.**

Sec. 9. The purchaser or assignee of a registrant's business operations shall notify the department and the contract buyers of the purchase or assignment of the prepaid contracts.

### **328.220 Nonguaranteed or guaranteed price contracts; execution.**

Sec. 10. All prepaid contracts provided for under this act shall be either a nonguaranteed price contract or a guaranteed price contract and shall be made and executed pursuant only to this act.

### **328.221 Guaranteed price contract; requirements.**

Sec. 11. (1) A guaranteed price contract shall designate a provider who has agreed to furnish the merchandise or funeral or cemetery services specified in the contract upon the death of the contract beneficiary. If the provider designated is not the prepaid contract seller of the contract, the provider shall be made a party to the prepaid contract before any consideration is paid and the prepaid contract is not binding on the contract buyer until the provider has been made a party to the prepaid contract.

(2) In addition to the registration otherwise required by the terms of this act, the provider which has agreed to provide merchandise or funeral or cemetery services pursuant to a guaranteed price contract shall, at the time the prepaid contract is entered into, possess any license or registration required in order to provide the funeral or cemetery services, pursuant to article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If a provider is required to possess a license or registration to provide the services included in a prepaid contract, a contract seller who does not possess a license or registration to

provide the services must disclose to the contract buyer or prospective contract buyer that it cannot perform those activities required to be registered or licensed.

**328.222 Funds to be held in escrow by escrow agent; additional commission not subject to depository requirements; commission if contract price paid in installments; refund; qualifications and selection of escrow agent; authorized investments; fees and expenses; commingling; separate accounting of principal and income; notice to contract buyer; disbursement of funds; nonprofit corporation or association as escrow agent; furnishing statement to contract buyer.**

Sec. 12. (1) Except as otherwise provided in subsection (2), all funds received in connection with a prepaid contract shall be held in escrow by an escrow agent for the benefit of the contract beneficiary.

(2) Funds received by a cemetery registered under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, for cemetery merchandise may, in lieu of subsection (1), be escrowed as follows:

(a) For the first 12 months after the effective date of the amendatory act that added this subdivision, 60% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(b) For the thirteenth through twenty-fourth month after the effective date of the amendatory act that added this subdivision, 65% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(c) For the twenty-fifth through the thirty-sixth month after the effective date of the amendatory act that added this subdivision, 70% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(d) For the thirty-seventh through the forty-eighth month after the effective date of the amendatory act that added this subdivision, 75% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(e) For the forty-ninth month after the effective date of the amendatory act that added this subdivision and thereafter, 80% of the funds received from the sale of cemetery merchandise pursuant to prepaid contracts.

(3) A prepaid contract may authorize the contract seller or provider to charge an additional commission of not more than 10% of the contract price which shall not be subject to the depository requirements of this section. If the contract price is paid in installments, the commission retained by the contract seller or the provider shall not exceed the rate of the commission charged in the prepaid contract for each installment. A contract buyer upon cancellation is entitled to a refund as provided in section 13(1) or (2).

(4) Only the following persons may serve as the escrow agent of funds:

(a) If the prepaid contract is a nonguaranteed price contract, the contract seller or provider of that nonguaranteed price contract.

(b) In the case of either a guaranteed or nonguaranteed price contract, a depository, a trust company, or a Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral establishments licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or a Michigan nonprofit corporation or association, in which the majority interest is held by 30 or more cemeteries registered and operated pursuant to the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If the prepaid contract is a guaranteed price contract, the contract seller or the provider shall not serve as the escrow agent.

(5) If the escrow agent is not the contract seller or provider of a nonguaranteed price contract, the escrow agent shall be selected as follows:

(a) If the prepaid contract is a nonguaranteed price contract, the escrow agent may be selected by either the contract seller or the provider.

(b) If the prepaid contract is a guaranteed price contract, the escrow agent shall be selected by the provider who has been designated to furnish the funeral services. If the prepaid contract does not include funeral services, the escrow agent shall be selected by any provider.

(6) If the escrow agent is a person other than the person to whom the funds have been paid by the contract buyer, the funds shall be deposited with the escrow agent within 30 days after the receipt by the person to whom the funds are paid.

(7) Funds held by an escrow agent shall be held and invested only as specified in the prepaid contract. A prepaid contract may authorize investments only as follows:

(a) If the prepaid contract is a nonguaranteed price contract, the funds shall be invested in 1 or more interest-bearing accounts in a depository.

(b) If the prepaid contract is a guaranteed price contract, the principal and income may be invested only in accordance with section 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.7302, except that funds shall not be invested in a company owned by, operated by, or affiliated in any way with a contract seller or provider or their authorized agents, or in loans to any person directly connected with or employed by a contract seller or provider or their authorized agents.

(8) Income shall be held and invested by the escrow agent in the same manner as the principal except that the income may be utilized to pay reasonable fees and expenses of the escrow agent in addition to other costs specifically authorized by this act. The expenses and fees paid to the escrow agent shall not exceed 1% of the aggregate balance of principal and prior earned income from each account annually. If a fee is charged for reasonable expenses for the administration costs under an escrow agreement, the amount may be paid to the escrow agent periodically or may be accumulated in the account and paid at the time of death or upon cancellation of the contract. A cemetery that has elected the escrowing option for cemetery merchandise provided in subsection (2) may provide by written agreement with the escrow agent to be paid accumulated income generated solely by the investment of funds received for the cemetery merchandise. Such payments to a cemetery may not be made more frequently than once in a 12-month period and shall not exceed the net amount of income earned in the previous 12 months less any amounts paid to the escrow agent for expenses and fees described in this subsection and an amount equal to any increase in the Detroit consumer price index.

(9) Amounts of principal and income held by an escrow agent other than the contract seller or provider of a nonguaranteed price contract may be commingled with principal and income derived from other prepaid accounts. However, a separate accounting of principal and income shall be maintained for each prepaid contract under the name of the contract beneficiary.

(10) The escrow agent shall send to the contract buyer a notice stating the date, amount of the deposit, and the name of the escrow agent with whom the funds are deposited.

(11) Upon the death of the contract beneficiary and upon performance by the provider of its obligation to furnish merchandise or funeral or cemetery services pursuant to the prepaid contract, funds held by the escrow agent shall be disbursed as follows:

(a) If the prepaid contract is a nonguaranteed price contract, the principal and income shall first be disbursed by the escrow agent to the provider of the merchandise or funeral or cemetery services in payment of all reasonable charges. Thereafter, not less than 90%

of the remaining balance of principal and income, if any, shall be disbursed to the person, other than the provider or the contract seller, designated in the prepaid contract or authorized by law to receive the surplus, and the remainder, if any, shall be disbursed to the provider as final compensation for its services. The amount paid to the person entitled to receive the surplus shall be as follows:

(i) If no commission has been charged pursuant to this section, at least 90% of the remaining balance of principal and income in the escrow account.

(ii) If a commission of 5% or less of the contract price has been charged, at least 95% of the remaining principal and income in the escrow account.

(iii) If a commission of greater than 5% of the contract price has been charged, 100% of the remaining principal and income in the escrow account.

(b) If the prepaid contract is a guaranteed price contract, the principal and income held by the escrow agent shall be disbursed to the provider, its designee, or its successor.

(c) If the escrow agent is notified that there is a dispute as to whether the provider has performed all its obligations under the prepaid contract, the escrow agent shall file an action for interpleader or shall obtain an impartial arbitrator to determine the rights of the parties. Expenses of arbitration shall be shared equally by the parties unless otherwise ordered by the arbitrator.

(12) A Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral establishments or by 30 or more cemeteries registered and operated under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, may be designated as the escrow agent only if the contract buyer has expressly authorized that designation in writing. If the contract buyer authorizes the appointment as escrow agent of a Michigan nonprofit corporation or association in the prepaid contract, the authorization shall be set forth in a separate paragraph which shall not be effective unless separately signed or initialed by a contract buyer and which shall state that the contract buyer may elect to require that a depository or a trust company be designated as the escrow agent.

(13) If a prepaid contract is canceled, the escrow agent shall disburse the principal and income in accordance with section 13.

(14) At least annually, unless waived in writing by a contract buyer, a contract buyer shall be furnished a statement indicating the current balance, the fees or expenses charged since the last statement, the amount of the refund to which a buyer is entitled in the event the contract is canceled, and the name and address of the escrow agent from whom additional information may be obtained relative to the account. The cost of the statement required by this subsection may be paid from the income and may be in addition to any other fee or charge authorized by this act.

### **328.223 Cancellation of prepaid contract by contract buyer; notice; disbursement of principal and income; cancellation of contract by contract seller or provider; failure to use escrow account to make funeral arrangements; assignment or transfer of obligations.**

Sec. 13. (1) A contract buyer may cancel a prepaid contract at any time before the death of the contract beneficiary upon 30 days' prior written notice to the contract seller of a nonguaranteed price contract or to the provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract. The contract seller or provider shall promptly notify the escrow agent of the cancellation and of its effective date, if the escrow agent is other than the contract seller or the provider. After receipt of the notice of cancellation, except as otherwise provided in subsection (2), the escrow agent



shall disburse not less than 90% of the principal and income in the escrow account to the contract buyer pursuant to this subsection and shall disburse the remainder of the principal and income, if any, to the contract seller or the provider. The refund to the contract buyer shall be determined as follows:

(a) If no commission has been charged pursuant to section 12(1), at least 90% of the remaining balance of principal and income in the escrow account or held by the trustee.

(b) If a commission of 5% or less of the contract price has been charged, at least 95% of the remaining principal and income in the escrow account.

(c) If a commission of greater than 5% of the contract price has been charged, 100% of the remaining principal and income in the escrow account.

(2) In the case of funds received for cemetery merchandise by a cemetery that has elected the escrowing option in section 12(2), the escrow agent shall disburse the principal and income in the account to the cemetery and the cemetery shall disburse to the contract buyer 100% of the amount of the contract price paid by the contract buyer plus an amount equal to any increase in the Detroit consumer price index since the contract was executed.

(3) A contract seller of a nonguaranteed price contract or a provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract may cancel a prepaid contract only if the contract buyer of a guaranteed price contract is more than 90 days delinquent in making any installment payment or partial payment, or the contract buyer is otherwise in default as to any other obligation under the contract. Upon cancellation, the contract buyer shall receive a refund as determined pursuant to subsection (1).

(4) After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract. After such a cancellation, the contract buyer or the contract buyer's estate shall receive a refund in accordance with subsection (1) or (2) within 30 days after receipt by the contract seller or the provider of a request for payment from the contract buyer or the contract buyer's estate. Contracts may be upgraded after the death of the contract beneficiary by a person on behalf of the contract beneficiary's estate or by a person entitled to make funeral or cemetery arrangements. This subsection does not prevent the transfer of a contract from 1 provider to another provider upon the request of those entitled to make funeral arrangements.

(5) Prior to the death of the contract beneficiary and in the case of a prepaid contract or multiple prepaid contracts containing any of the merchandise or services escrowed under section 12(1) together with cemetery merchandise escrowed under section 12(2), the buyer may cancel that portion of the contract pertaining to the cemetery merchandise alone, without canceling the remaining portions. Such cancellation is subject to refund pursuant to section 13(2).

(6) A contract seller or a provider that assigns or transfers its obligations under a prepaid contract to another provider shall notify the contract buyer of the assignment in writing. If the contract buyer cancels the contract within 30 days of the notification of the assignment, the buyer shall be entitled to a refund of 100% of the remaining principal and income plus the commission, if any, charged in accordance with section 12(1) or (2). An assignment or transfer of a provider's obligations under a prepaid contract that is made in connection with the sale of a business is subject to this subsection only if more than 50% of the ownership interest in the business is transferred to another person or persons

within a 12-month period. Upon sale of the business, the notice requirement of this subsection is the responsibility of the purchaser. This subsection does not apply to an assignment of a financial interest in an installment contract to a financial institution. At the time that the contract seller or provider receives payment in exchange for selling or assigning its financial interest in an installment contract to a financial institution, the contract seller or provider shall be required to place in escrow the amount required by this act. This subsection does not apply to burial rights or other land interests, crypts, inscribed grave memorials, or niches, for which no refunds are available.

**328.225 Prices or quotations of prices; requirements; exception; manipulation of prices prohibited; provision for revocation of contract; refund; disclosure of right to cancel contract and amount of refund; disclosure of commissions; services requiring mortuary science license or funeral establishment license; construction of act; designation of new contract beneficiary; notice; clear indication of nonguaranteed price contract, actual costs, and obligations.**

Sec. 15. (1) All prices or quotations of prices contained in a prepaid contract, offer, or solicitation shall be stated in compliance with applicable federal and state laws and regulations. In addition, a person who offers either merchandise or funeral or cemetery services on a preneed or at-need basis shall comply with the price disclosure rules of the federal trade commission, code of federal regulations, 16 C.F.R., part 453, whether or not the rules by their own terms apply to the offering. This subsection does not apply to the sale of any interest covered by the endowment care trust requirements of the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(2) A person who sells or offers to sell both funeral goods or services and nonfuneral goods or services as part of the same transaction or series of transactions shall not manipulate the relative prices of the goods or services so as to allocate a disproportionate share of the total price to nonfuneral property or services.

(3) All prepaid contracts shall provide that a contract buyer may revoke the prepaid contract within 10 business days after entering into the prepaid contract and that upon revocation, all funds paid to the contract seller or provider shall be refunded. This provision shall be conspicuously set forth in the prepaid contract at a place immediately before the place where the contract buyer is to sign his or her name.

(4) A prepaid contract shall disclose the contract buyer's right to cancel the prepaid contract and the amount of the refund to which the contract buyer or that person's estate is entitled upon cancellation. The disclosure shall be stated substantially as follows:

"This contract may be canceled either before death or after death by the buyer or, if the buyer is deceased, by the person or persons legally authorized to make funeral or cemetery arrangements. If the contract is canceled, the buyer or the buyer's estate is entitled to receive a refund of \_\_\_\_\_% of the contract price and any income as required by law."

In addition, if a commission is charged pursuant to section 12, the amount of the commission and the fact that it is a charge which is in addition to the contract price shall be stated in the prepaid funeral contract. If a printed contract form is used, the disclosures required by this subsection shall be stated in boldfaced type.

(5) This act does not authorize a contract seller or provider to perform or offer to perform services for which a mortuary science license or funeral establishment license is required by article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, unless that person holds the required license or licenses and does not require a contract

seller or a provider to possess this license or any other license to engage in an activity covered under this act for which a license is not required by any other act.

(6) A prepaid contract shall provide that the contract buyer may designate a new contract beneficiary any time before the death of the contract beneficiary originally specified in the prepaid contract by providing written notice to the contract seller of a nonguaranteed price contract or the provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract. Notwithstanding any other provisions of law, a contract buyer may designate the estate of a deceased person as the contract beneficiary, or provide that the contract beneficiary is the first of 2 or more designated persons to die.

(7) A prepaid contract that is a nonguaranteed price contract shall have it indicated clearly on the prepaid contract that it is a nonguaranteed price contract and that the actual costs of the merchandise or funeral or cemetery services delivered at the time of death may be greater or less than the amount of principal and income in the escrow account, and that the buyer, the buyer's estate, or the person or persons legally entitled to make funeral or cemetery arrangements, or both, are not obligated to purchase specific merchandise and services which were selected before the death of the contract beneficiary or to expend a specific amount on merchandise or funeral or cemetery services.

### **328.226 Prepaid funeral contract not in writing as voidable; agreement as to rate of interest; interest added or deducted in advance; computation of interest; financing of contract.**

Sec. 16. (1) A prepaid contract that is not in writing is voidable by any party to the prepaid contract.

(2) A prepaid contract made in violation of this act or with a person who is not registered pursuant to section 6 is voidable by the contract buyer or by a personal representative of the contract beneficiary.

(3) The parties to a prepaid contract may agree in writing for the payment of a rate of interest not to exceed 10.5% per annum with the following conditions:

(a) A prepaid contract made under this act shall not provide for a rate of interest added or deducted in advance. Interest shall be computed from time to time only on the basis of unpaid balances.

(b) A prepaid contract made under this act shall not provide that the rate of interest initially effective may be increased for any reason.

(c) A contract seller shall not impose any fees or charges in addition to interest in connection with the financing of a prepaid contract.

(4) A contract seller shall not offer financing or offer to obtain financing of a prepaid contract under terms and conditions other than allowed by this section.

### **328.228 Prohibited conduct; rules; administrative action.**

Sec. 18. (1) Notwithstanding any other law to the contrary, a person selling or offering to sell merchandise or funeral or cemetery services, whether a registrant or not, shall not do any of the following:

(a) Solicit a specific person for the purpose of providing merchandise or funeral or cemetery services for a prospective contract beneficiary knowing that the death of the prospective contract beneficiary has already occurred or is probably imminent.

(b) Make a false or misleading statement, oral or written, regarding the sale of merchandise or funeral or cemetery services pursuant to a prepaid contract or regarding

the rights or obligations of any party or prospective party to a prepaid contract for the purpose of inducing a person to purchase the merchandise or funeral or cemetery services or a prepaid contract.

(c) Advertise or offer merchandise or funeral or cemetery services for sale before the death of a prospective contract beneficiary in a manner which is false, misleading, deceptive, or unfair.

(d) Fail to refund principal or principal and income paid for a prepaid contract in violation of this act.

(e) Refuse the use of merchandise bought from another vendor or discriminate by price, burial fee, or otherwise for not purchasing merchandise from or under the direction of the funeral establishment or cemetery. This subdivision does not prohibit a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors as to the quality, size, shape, type, installation, and maintenance of a grave memorial or a cemetery burial vault or other outside container or urn, except that such regulations may not limit as to supplier or vendor.

(f) Require the purchase of a cemetery burial vault or other outside container from a particular person as a condition to burial in a cemetery in this state. However, this subsection does not limit the right of a cemetery to require the use of a cemetery burial vault or other outside container.

(g) Violate this act or rules promulgated under this act.

(2) A registrant or a person acting on behalf of a registrant, including an agent or employee of a registrant, shall not do any of the following:

(a) Practice fraud, or deception in obtaining registration.

(b) Refuse to disclose books and records required to be maintained and disclosed under this act.

(3) The director of the department may promulgate rules regulating the solicitation of prepaid contracts by registrants to protect against solicitations which are intimidating, vexatious, fraudulent, or misleading or which take unfair advantage of a person's ignorance or emotional vulnerability.

(4) Any administrative action brought under this act shall be in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

### **328.229 Irrevocable prepaid contract approved by family independence agency or department of community health; rules.**

Sec. 19. (1) A prepaid contract may be made with an applicant for or recipient of assistance under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or a patient or a legal guardian of a patient in a community health care facility under the jurisdiction of the department of community health. If the family independence agency or department of community health determines that the contract is a fully paid guaranteed price contract, and that the proceeds of the contract and the amount of any death benefit from an insurance policy or annuity contract that has been assigned pursuant to section 2080(6) of the insurance code of 1956, 1956 PA 218, MCL 500.2080, as payment for merchandise or funeral or cemetery services for the contract beneficiary are not more than that amount allowed under section 2080(6)(g) of the insurance code of 1956, 1956 PA 218, MCL 500.2080, plus \$2,000.00, exclusive of income, and that the state will not be liable for the merchandise or funeral or cemetery services, excluding an outside receptacle when required by the chosen cemetery, of the applicant for or recipient of assistance or patient allowable under contracts under this act, the prepaid contract shall be made irrevocable

at the request of the applicant for or recipient of assistance, or the patient or a legal guardian of a patient. Nothing in this section shall be construed as increasing the amount of excludable burial assets for family independence agency or medicaid program eligibility above that allowed under existing family independence agency standards, including any increases in those standards. The family independence agency or department of community health shall advise the applicant for or recipient of assistance, or the patient or a legal guardian of a patient that additional merchandise or funeral or cemetery services subject to contract under this act will not be paid by the family independence agency or department of community health but shall not specify or require approval of particular merchandise or funeral or cemetery services selected by the applicant for or recipient of assistance, or patient or a legal guardian of a patient.

(2) A prepaid contract approved by the family independence agency or department of community health shall not be revoked or canceled by the contract seller, contract provider, contract buyer, or their successors, or the estate of the contract beneficiary either before or after the death of the contract beneficiary. This subsection does not prevent those legally entitled to make arrangements for a contract beneficiary from reallocating the amount paid under the prepaid contract to different funeral or cemetery services and merchandise. A contract seller or provider shall assign an irrevocable prepaid contract to another provider upon the written request of the contract beneficiary, his or her successor, or those legally entitled to make arrangements for the contract beneficiary so long as the written request is received before a provider's obligations have been performed. An irrevocable contract shall not be considered in determining the eligibility of an applicant or recipient for assistance given under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b. An irrevocable prepaid contract made under this section is not subject to the cancellation provision of section 13 or to the provisions of section 15(6).

(3) Notwithstanding any other provisions of this act, funds paid in connection with an irrevocable prepaid contract may, at the option of the provider, be held and deposited in the manner prescribed for a nonguaranteed price contract.

(4) The family independence agency and department of community health may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the uniform administration of this section.

### **328.230 Complaint; investigation; examination of books, records, contracts, and other documents; duties of department on determination of reasonable cause to believe in occurrence of violation; violation; hearing; duties of department on determination of violation.**

Sec. 20. (1) Upon complaint made by any person, or upon its own initiative, the department may investigate alleged violations of this act or rules promulgated under this act by a registrant or any other person. The department may examine books, records, contracts, and other documents in possession of or under the control of any registrant with or without the consent of that registrant and with or without a warrant authorizing the examination, or of any other person if that person consents to an examination or if the department obtains a warrant authorizing an examination. If the department determines that reasonable cause exists to believe that a violation has occurred, it shall do 1 of the following:

(a) If the alleged violation was committed by a person other than a registrant, the department shall refer the matter to the attorney general or a prosecuting attorney for criminal or civil action as provided in sections 23 and 24.

(b) If the alleged violation was committed by a registrant, the department shall do either of the following:

(i) Refer the matter to the attorney general for civil or criminal prosecution or enforcement.

(ii) Institute proceedings in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department or the department of the attorney general may petition a court of competent jurisdiction for issuance of a subpoena requiring the person subpoenaed to appear to testify or produce relevant documentary material for examination at a proceeding conducted under subsection (1)(a) or (b).

(3) If, after a hearing, the department determines that a registrant has violated the provisions of this act or any rule promulgated pursuant to this act, the department shall do 1 or more of the following:

(a) Suspend or revoke the registration.

(b) Impose a civil fine not to exceed \$5,000.00 for each violation and may suspend the registration until the fine is paid.

(c) Require restitution of funds paid pursuant to a prepaid contract. Restitution may include suspending the registration until restitution is made.

(d) Impose a period of probation during which the registrant is required to comply with additional conditions imposed by the department in lieu of or in addition to the imposition of other penalties provided under this act.

(e) Impose restrictions upon the registrant's prepaid business activities which require additional accountability to the department.

(f) Issue a written warning to the registrant.

### **328.231 Violations; penalties.**

Sec. 21. A violation of this act by a person who is licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, is considered a violation of the respective licensing act, and the violator is subject to penalties available under those acts.

### **328.232 Conversion of funds as felony; violation as misdemeanor; penalties.**

Sec. 22. (1) A person who converts funds paid pursuant to a prepaid contract to his or her own use or benefit other than as authorized by this act or who fails to escrow or trust funds according to this act is guilty of a felony punishable by a fine of \$5,000.00 or imprisonment of not more than 5 years, or both, for each violation.

(2) A person who violates any other provision of this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, for each violation.

### **328.233 Noncompliance with investment and depositing requirements; petition for appointment of receiver; notice; hearing; liquidation.**

Sec. 23. If the department determines that a registrant has not complied with the investment and depositing requirements of this act and that insufficient funds are available in trust or escrow accounts to meet the obligations of prepaid contracts, the department may petition the circuit court of the county of the registrant's principal place of business or the county of Ingham for appointment of a receiver. After notice to the

registrant and a hearing and upon its concurrence in the findings of the department, the court shall appoint a qualified person as a receiver. A receiver appointed under this section has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. Any remaining funds held in escrow pursuant to this act shall be regarded as belonging to contract buyers or contract beneficiaries according to their interests and shall be distributed to these entities pro rata on the basis of the amount of funds paid by the contract buyers and shall not be available to general creditors of the estate. Under appropriate circumstances, the receiver may file for protection under the bankruptcy code.

### **328.234 Action to force compliance; damages; orders.**

Sec. 24. The department or any other person, in order to force compliance with this act, may bring an action in a circuit court in any county in which the registrant or any other person has solicited or sold prepaid contracts, whether or not that person has purchased a prepaid contract or is personally aggrieved by a violation of this act. The court may award damages, issue equitable orders in accordance with the Michigan court rules to restrain conduct in violation of this act, and award reasonable attorney fees and costs to a prevailing party.

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

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 513 of the 92nd Legislature is enacted into law.

#### **Effective date.**

Enacting section 2. This amendatory act takes effect January 1, 2005.

This act is ordered to take immediate effect.

Approved March 9, 2004.

Filed with Secretary of State March 10, 2004.

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**Compiler's note:** Senate Bill No. 513, referred to in enacting section 1, was filed with the Secretary of State March 10, 2004, and became P.A. 2004, No. 22, Eff. Jan. 1, 2005.

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## **[No. 22]**

### **(SB 513)**

AN ACT to amend 1968 PA 251, entitled "An act to regulate the creation and management of cemeteries; to regulate the sale of cemetery services and merchandise; to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to regulate persons selling burial, entombment, or columbarium rights, cemetery services, or cemetery merchandise; and to prescribe penalties," by amending the title and sections 2, 8, 9, 10, 12, 12a, 13, 15, 16, 18, 19, and 21 (MCL 456.522, 456.528, 456.529, 456.530, 456.532, 456.532a, 456.533, 456.535, 456.536, 456.538, 456.539, and 456.541), the title and sections 2, 8, 12, 12a, 13, 15, 18, 19, and 21 as amended by 1982 PA 132, section 9 as amended by 2003 PA 289, section 10 as amended by 1982 PA 289, and section 16 as amended by 2003 PA 89, and by adding section 16a.

*The People of the State of Michigan enact:*

TITLE

An act to regulate the creation and management of cemeteries; to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to provide for long-term care of certain cemeteries; to regulate persons selling burial, entombment, or columbarium rights; and to prescribe remedies and penalties.

**456.522 Definitions.**

Sec. 2. As used in this act:

(a) “Cemetery” means 1 or a combination of more than 1 of the following:

(i) A burial ground for earth interments.

(ii) A mausoleum for crypt entombments.

(iii) A crematory for the cremation for human remains.

(iv) A columbarium for the inurnment of cremated remains.

(b) “Interment” means the disposition of human remains by earth interment, entombment, or inurnment.

(c) “Burial right” means a right of earth interment.

(d) “Entombment right” means the right of crypt entombment in a mausoleum or in an aboveground vault.

(e) “Columbarium right” means the right of inurnment in a columbarium for cremated remains.

(f) “Mausoleum” means a building or other aboveground structure that is affixed to land and is a permanent repository for human remains.

(g) “Crypt” means a chamber in a mausoleum of sufficient size to entomb the uncremated remains of a deceased person.

(h) “Columbarium” means a building or other aboveground structure that is affixed to land and is a permanent repository for cremated human remains.

(i) “Crematory” means a building or structure, within which the remains of deceased persons are or are intended to be cremated.

(j) “Cremation” means the incineration of the body of the deceased person.

(k) “Cemetery commissioner” or “commissioner” means the director of the department of labor and economic growth or a designee of the director.

(l) “Municipal corporation” means that term as defined in section 1 of 1927 PA 10, MCL 456.181.

(m) “Person” means an individual, group of individuals, sole proprietorship, partnership, limited liability company, association, corporation, government agency, cemetery, or a combination of these legal entities.

**456.528 Commissioner; rules.**

Sec. 8. The commissioner may promulgate rules in accordance with and subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act, including rules regarding all of the following:

(a) The maintenance of records relative to the financial aspects of cemeteries.

(b) Requirements for applications for the granting of permits and registrations required under this act.



(c) The formal and informal procedures governing the conduct of contested cases under this act before the commissioner or an authorized hearing officer.

**456.529 Commissioner; hearings; oaths; testimony; witnesses; production of books and records; subpoena; violation of act, rule, or order; cease and desist order; assurance of discontinuance; action to enforce compliance; injunction or restraining order; appointment of receiver or conservator; bond not required; denial of application; suspension or revocation of permit or registration.**

Sec. 9. (1) The commissioner may hold hearings, administer oaths, take testimony under oath, and request in writing the appearance and testimony of witnesses, including the production of books and records. Upon the refusal of a witness to appear, testify, or submit books and records after a written request, the commissioner or a party to a contested case may apply to the circuit court for Ingham county for a subpoena or a subpoena duces tecum. The court shall issue a subpoena when reasonable grounds are shown.

(2) When it appears to the commissioner that a person or registrant has violated this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

- (a) Issue a cease and desist order.
- (b) Accept an assurance of discontinuance.

(c) Bring an action in the circuit court for the county in which the person resides or in the circuit court for the county of Ingham, to enforce compliance with this act or a rule promulgated or order issued under this act.

(3) Upon a proper showing regarding an action brought under subsection (2)(c), a permanent or temporary injunction or a restraining order may be granted and a receiver or conservator may be appointed by the court. A receiver or conservator appointed by the court may take possession of the assets and may sell, assign, transfer, or convey the cemetery, including a cemetery in receivership on the July 26, 2002 date of the amendatory act that amended this subsection, to a municipal corporation or other person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment, under conditions prescribed by the court, in order to discharge outstanding contractual obligations. A receiver appointed under this section has all the powers, authority, and remedies of an assignee for the benefit of creditors under chapter 52 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5201 to 600.5265. The court may allow the receiver or conservator to file for protection under the bankruptcy code.

(4) In the order of sale of the cemetery, the court shall make provision for notice to creditors and the filing of claims against the receivership or conservatorship. Any remaining funds held by the cemetery in escrow under this act belong to the contract buyers or beneficiaries of the contract buyers and shall not be distributed to the general creditors of the cemetery. This section does not prohibit the court from allowing the sale of the cemetery to a person other than the holder of a license for the practice of mortuary science or a person who owns, manages, supervises, operates, or maintains, either directly or indirectly, a funeral establishment or municipal corporation.

(5) In addition to an action taken under this section, the commissioner may deny an application or may suspend or revoke a permit or registration after a hearing as set forth in this act.

**456.530 Commissioner; auditing trust funds; registration of cemeteries; exemptions; municipal ordinances.**

Sec. 10. (1) The commissioner shall institute and maintain a system of auditing trust funds required by this act and of registering each cemetery authorized to be created, maintained, and operated under 1869 PA 12, MCL 456.101 to 456.119, and 1855 PA 87, MCL 456.1 to 456.36, and conducting sales under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, as well as any other cemetery operating under state law or local ordinance. A cemetery owned and operated by a municipal corporation, church, or religious institution is exempt from this act. However, a municipal corporation may pass ordinances necessary for regulating that municipal corporation's cemeteries.

(2) A cemetery for earth interment of 10 acres or less in size, which is owned and operated entirely and exclusively by an existing nonprofit entity and in which a burial has taken place before September 15, 1968, is exempt from the fee provisions of this act, shall have the trust fund required by this act audited at the discretion of the commissioner, and is exempt from the endowment care trust fund requirements of section 16, except for the report requirements if the cemetery maintains care or memorial funds.

**456.532 Permit for registration required; acquisition of controlling interest in cemetery company; application for certificate of approval; contents; issuance; fee; noncompliance; hearing; action to ensure compliance; "controlling interest" defined.**

Sec. 12. (1) A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.

(2) If a person proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain the name and address of the proposed new owner or operator and other information as the commissioner requires. The commissioner shall issue a certificate of approval only after he or she is satisfied that the proposed new owner is qualified by character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. The application for a purchase or change of control must be accompanied by an initial filing or investigation fee of \$500.00. If a person fails to comply with this section, the commissioner shall order that an administrative hearing be held. If a transfer of controlling interest is found to have taken place without prior commissioner approval, the commissioner may suspend or revoke the registration of the cemetery or take other appropriate action until it demonstrates compliance with this section.

(3) As used in this section, "controlling interest" means the capability to decide the operating and financial policies of the cemetery company or to select the officers or directors with majority control of the cemetery company.

**456.532a Examining affairs of cemetery or person; inspection or audit of books, papers, records, and documents; audit charges.**

Sec. 12a. (1) The commissioner or an examiner, investigator, or other person the commissioner may appoint, may visit and examine the affairs of any cemetery or person required to register under this act and shall have free access to the books, papers, records, and documents that relate to the business of the cemetery corporation, person, or agent acting on its behalf.

(2) The books, papers, records, and documents shall be available for inspection or audit at any time during regular business hours with reasonable notice. One or more qualified persons shall conduct the audit whose services shall be charged to and paid by the cemetery at the rate of \$10.00 per hour, but not more than \$1,000.00 total.

**456.533 Establishment of cemetery; application for permit; investigation fee.**

Sec. 13. (1) Any person desiring to establish a cemetery shall file with the commissioner, on forms furnished by the commissioner, an application for a permit to establish a cemetery. The application shall be accompanied by an investigation fee of \$500.00.

(2) After a receipt of an application, the commissioner shall conduct an investigation pertaining to the physical plans, the community need for the planned cemetery, and pertinent information pertaining to the applicant's experience, financial stability, ability, and integrity. If the applicant is not a natural person, the same investigation shall be made of the general manager and principal owners.

**456.535 Registration of cemetery; time; application; form; fee; expiration; procedure for denying registration; late penalty filing fee.**

Sec. 15. (1) Each person operating a cemetery shall register the cemetery by filing with the commissioner a registration application before June 2 of each year, on a form furnished by the commissioner, and accompanied by the registration fee. A registration expires on July 1 of each year.

(2) If the commissioner intends to deny registration, the procedure set forth in section 19 shall be followed. The commissioner may impose a late penalty filing fee of \$10.00 per day on a person which filed a registration application after June 1.

**456.536 Irrevocable endowment care fund; establishment and maintenance; annual report; application for care fund deposit modification or waiver; expenses; agent or seller; deposit requirements; merchandise trust account; deposit for sale of burial vaults or containers; repayment; installation of vault; contents of cemetery merchandise and services contract; annual report by cemetery or agent; deficit in amount of required deposits; penalty; hearing; additional penalty; disposition of fees, charges, and penalties; "endowment care" defined.**

Sec. 16. (1) The commissioner shall require each cemetery to establish and maintain an irrevocable endowment care fund as required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a of 1869 PA 12, MCL 456.107a, and to report annually before July 1 of each year, on forms approved and furnished by the commissioner, care fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery applying to the commissioner as authorized by other statutes for a care fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner. The commissioner shall require each person engaged as agent or seller, as a means of livelihood either part time or full time, in the selling of burial rights, entombment rights, or columbarium rights owned by a party other than a cemetery or corporation subject to the irrevocable endowment care fund requirements of other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable endowment care fund of the cemetery in which the rights are located if an

irrevocable endowment care fund exists for that cemetery. Excess sums on deposit in the fund can be applied by a cemetery against future deposits. A deposit required to be made by those persons shall be modified or waived if the cemetery has received an irrevocable endowment care fund deposit modification or waiver approved by the commissioner. The total deposit for a single adult burial right sale or assignment shall not be less than \$20.00.

(2) Subject to subsection (8), a cemetery which is required to register pursuant to this act and an agent which is authorized by a cemetery or acting on its behalf under an agreement or sales contract to sell cemetery merchandise or cemetery services shall establish a merchandise trust account and deposit a percentage of the gross proceeds received from the sales as determined by the commissioner. The merchandise trust account shall be maintained exclusively for the deposit of the money into a state or national bank, a state or federally chartered savings and loan association, or a trust company under the terms of a written trust agreement approved by the commissioner. It shall be the responsibility of each registrant under this act to assure that documents relating to the merchandise trust account are provided to the commissioner upon request. If a subpoena is issued to obtain these documents, the registrant shall pay all costs related to obtaining the documents regardless of the \$100.00 charge limitation contained in section 12a(2). The funds shall be deposited not later than the month following their receipt.

(3) Subject to subsection (8), the total deposits to a merchandise trust for the sale of cemetery burial vaults or other outside containers, other than crypts installed underground and sold as part of a cemetery lot, shall at all times be not less than the greater of \$100.00 per vault or outside container or 130% of the total costs of the containers covered by the trust. Money deposited in connection with a sale shall be repaid within 30 days upon written demand of purchaser. A burial vault shall be installed only at need or by separate written authorization of the purchaser. The cemetery shall have the right to withdraw the amount on deposit for the delivered vault or outside container.

(4) Subject to subsection (8), a contract or agreement made with a purchaser of cemetery merchandise and cemetery services shall contain a complete description of the cemetery merchandise purchased and of the cemetery services to be rendered.

(5) The commissioner shall require each cemetery or agent authorized by it acting on its behalf to report annually before July 1 of each year on forms provided by the commissioner. The reports shall contain information as the commissioner considers necessary to ascertain that this act is being implemented.

(6) If, after an audit by the commissioner's staff, a deficit in the amount of required deposits to the trust funds is found, the commissioner may assess a penalty not to exceed 10% of the amount of the deficit. The cemetery or entity of a cemetery may request an administrative hearing before the commissioner within 30 days after being notified of a deficit by the commissioner. If, following the administrative hearing, the commissioner determines that a deficit does exist, an additional penalty not to exceed 1.5% may be assessed each month on the unpaid monthly balance until the deficit is paid in full.

(7) All fees, charges, and penalties collected under this act, other than fines prescribed in section 21, shall be paid to the commissioner. Upon receipt, the commissioner shall remit funds received to the department of treasury for deposit in the general fund of the state.

(8) Any preneed contracts for cemetery merchandise or services entered into on or after January 1, 2005 are subject to the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(9) As used in this section, "endowment care" means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to, the cutting of grass at reasonable intervals; raking, cleaning, filling, seeding,

and sodding of graves; replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

#### **456.536a Preconstruction sales of crypts or niches.**

Sec. 16a. A person shall not develop or build a mausoleum or columbarium and engage in preconstruction sales of crypts or niches in a mausoleum or columbarium unless that person does both of the following:

(a) Agrees to complete the mausoleum or columbarium within 4 years after the date of the first sale of an entombment or inurnment right in the proposed mausoleum or columbarium or, if construction is not completed within that time and upon the request of the purchaser, agrees to offer to the purchaser a refund of 100% of the purchase price with interest calculated at the rate of 4% per annum.

(b) Agrees that if the person for whom the entombment or inurnment right in the proposed mausoleum or columbarium dies before completion of the mausoleum or columbarium, an alternative disposition of the remains shall be provided until completion of the mausoleum or columbarium or until a refund is made of 100% of the purchase price with interest calculated at the rate of 4% per annum.

#### **456.538 Denial, suspension, or revocation of permit or registration, and other disciplinary action; grounds; effect; fulfillment of contractual obligations and agreements; administrative fine.**

Sec. 18. (1) The commissioner may deny an application filed under this act and refuse to issue a permit or registration, or may suspend or revoke a permit or registration, or may reprimand, place on probation, or take other disciplinary action against the applicant if the commissioner's investigation reveals facts which, with reference to the establishment of a cemetery, show inappropriate physical plans; lack of community need; inadequate experience, financial stability, or integrity to protect the public welfare; or when the commissioner finds that the applicant or its officers or general manager has done 1 or more of the following:

(a) Made a false statement of a material fact in the application.

(b) Not complied with this act.

(c) Been guilty of an unlawful or fraudulent act in connection with selling or otherwise dealing in cemetery lots and burial rights regulated by this act or funeral or cemetery merchandise and services regulated by the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(d) Been guilty in the judgment of the commissioner of other conduct whether of the same or different character than specified in this act which constitutes dishonest and unfair dealing.

(e) Violated article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812.

(f) Violated the terms of an assurance of discontinuance entered into with the commissioner pursuant to section 9(2).

(g) Violated the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(h) Failed to comply with section 2080 of the insurance code of 1956, 1956 PA 218, MCL 500.2080.

(i) Adopted, enforced, or attempted to enforce a regulation of the cemetery that prohibits the installation of a grave memorial or burial vault unless the grave memorial or

burial vault was purchased from the cemetery. This subdivision does not prohibit a cemetery from adopting and enforcing consistent rules and regulations to be followed by both the cemetery and outside vendors as to the quality, size, shape, type, installation, and maintenance of the grave memorial or burial vault.

(2) If the commissioner denies an application for a permit or registration, or suspends or revokes an existing permit or registration required by this act, the denial, revocation, or suspension shall revoke the cemetery operation as to the sale or assignment of burial rights, entombment rights, or columbarium rights, cemetery merchandise, or cemetery services after the date of the suspension, revocation, or denial. The corporation shall fulfill all contractual obligations and agreements entered into before the date of the suspension, revocation, or denial, and shall make required interments for the owners of burial rights, entombment rights, or columbarium rights purchased before the date of suspension, revocation, or denial.

(3) The commissioner may impose an administrative fine of not more than \$5,000.00 for each separate violation of this act.

**456.539 Denial, suspension, or revocation of permit or registration; notice of intent; hearing; decision.**

Sec. 19. If the commissioner intends to deny an application for a permit to establish a cemetery, to refuse registration of an existing cemetery, or to suspend or revoke a registration, the commissioner shall give written notice to the person involved of that intent. The notice shall state a time and a place for hearing before the commissioner or a designated hearing officer, and a summary statement of the reasons for the proposed action. The notice of intent shall be mailed by certified mail to the applicant at least 15 days before the scheduled hearing date. The commissioner shall hold a hearing pursuant to the notice in the manner required by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and the rules of procedure adopted by the commissioner. The commissioner shall issue a written decision.

**456.541 Violations; penalties.**

Sec. 21. (1) A person who violates this act is guilty of a misdemeanor, and, if a natural person, the first offense shall be punishable by a fine of not more than \$100.00 or imprisonment for not more than 90 days, and a second offense shall be punishable by a fine of not more than \$500.00 or imprisonment for not more than 1 year, or both.

(2) If the violator is other than a natural person, the first offense shall be punishable by a fine of not more than \$100.00 and the second offense shall be punishable by a fine of not more than \$1,000.00.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 512 of the 92nd Legislature is enacted into law.

**Effective date.**

Enacting section 2. This amendatory act takes effect January 1, 2005.

This act is ordered to take immediate effect.

Approved March 9, 2004.

Filed with Secretary of State March 10, 2004.

**[No. 23]****(SB 800)**

AN ACT to amend 1969 PA 306, entitled “An act to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date,” by amending sections 5, 8, 24, 28, 39, 41, 41a, 42, 44, 45, 45a, 49, 50, 52, and 53 (MCL 24.205, 24.208, 24.224, 24.228, 24.239, 24.241, 24.241a, 24.242, 24.244, 24.245, 24.245a, 24.249, 24.250, 24.252, and 24.253), sections 5, 8, 24, 41a, 42, 44, 45, 52, and 53 as amended and sections 28, 39, and 45a as added by 1999 PA 262 and section 41 as amended by 1993 PA 141.

*The People of the State of Michigan enact:*

**24.205 Definitions; L to R.**

Sec. 5. (1) “License” includes the whole or part of an agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes, or a license or registration issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(2) “Licensing” includes agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.

(3) “Michigan register” means the publication described in section 8.

(4) “Notice” means a written or electronic record that informs a person of past or future action of the person generating the record.

(5) “Notice of objection” means the record adopted by the committee that indicates the committee’s formal objection to a proposed rule.

(6) “Party” means a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

(7) “Person” means an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling, or contested case.

(8) “Processing of a rule” means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule’s adoption, and ending with the rule’s promulgation.

(9) “Promulgation of a rule” means that step in the processing of a rule consisting of the filing of a rule with the secretary of state.

(10) “Record” means information that is inscribed on a paper or electronic medium.

**24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.**

Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

#### **24.224 Adoption of guideline; notice.**

Sec. 24. (1) Before the adoption of a guideline, an agency shall give electronic notice of the proposed guideline to the committee, the office of regulatory reform, and each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. The committee shall electronically provide the notice of the proposed guideline not later than the next business day after receipt of the notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed guideline. The notice shall be given by mail, in writing, or electronically transmitted to the last address specified by the person requesting the agency for advanced notice of proposed action that may affect that person. A request for notice is renewable each December. Only electronic notice shall be given to any member or agency of the legislative and executive branches.

(2) The notice required by subsection (1) shall include all of the following:

(a) A statement of the terms or substance of the proposed guideline, a description of the subjects and issues involved, and the proposed effective date of the guideline.

(b) A statement that the addressee may express any views or arguments regarding the proposed guideline or the guideline's effect on a person.



(c) The address to which written comments may be sent and the date by which comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision about which the proposed guideline states a policy.

#### **24.228 Adoption of standard form contract; notice.**

Sec. 28. (1) Before the adoption of a standard form contract that would have been considered a rule but for the exemption from rule-making under section 7(p) or a policy exempt from rule-making under section 7(q), an agency shall give electronic notice of the proposed standard form contract or policy to the committee and the office of regulatory reform. The committee shall provide an electronic copy of the notice not later than the next business day after receipt of the electronic notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed standard form contract or policy.

(2) The electronic notice required by subsection (1) shall include all of the following:

(a) A statement of the terms of substance of the proposed standard form contract or policy, a description of the subjects and issues involved, and the proposed effective date of the standard form contract or policy.

(b) A statement that the addressee may express any views or arguments regarding the proposed standard form contract or policy or the standard form contract's or policy's effect on a person.

(c) The address to which comments may be sent and the date by which the comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision under which the standard form contract or policy is issued.

(3) If the value of a proposed standard form contract exempt from rule-making under section 7(p) is \$10,000,000.00 or more, the electronic notice required under subsection (1) shall include an electronic copy of the proposed standard form contract. If the value of the proposed standard form contract exempt from rule-making under section 7(p) is less than \$10,000,000.00, the agency shall provide an electronic or paper copy of the proposed standard form contract or policy to any legislator requesting a copy.

#### **24.239 Request for rule-making.**

Sec. 39. (1) Before initiating any changes or additions to rules, an agency shall electronically file with the office of regulatory reform a request for rule-making in a format prescribed by the office of regulatory reform. The request for rule-making shall include the following:

(a) The state or federal statutory or regulatory basis for the rule.

(b) The problem the rule intends to address.

(c) An assessment of the significance of the problem.

(2) An agency shall not proceed with the processing of a rule outlined in this chapter unless the office of regulatory reform has approved the request for rule-making.

(3) The office of regulatory reform shall record the receipt of all requests for rule-making on the internet and shall make electronic or paper copies of approved requests for rule-making available to members of the general public upon request.

(4) The office of regulatory reform shall immediately make available to the committee electronic copies of the request for rule-making submitted to the office of regulatory reform.

On a weekly basis, the office of regulatory reform shall electronically provide to the committee a listing of all requests for rule-making approved or denied during the previous week. The committee shall electronically provide a copy of the approved and denied requests for rule-making, not later than the next business day after receipt of the notice from the office of regulatory reform, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

**24.241 Notice of public hearing before adoption of rule; opportunity to present data, views, questions, and arguments; time, contents, and transmittal of notice; renewal of requests for notices; provisions governing public hearing; presence and participation of certain persons at public hearing required.**

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1).

(2) The notice described in subsection (1) shall include all of the following:

(a) A reference to the statutory authority under which the action is proposed.

(b) The time and place of the public hearing and a statement of the manner in which data, views, questions, and arguments may be submitted by a person to the agency at other times.

(c) A statement of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date of the rule.

(3) The agency shall transmit copies of the notice to each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice shall be by mail, in writing, or electronically to the last address specified by the person.

(4) The public hearing shall comply with any applicable statute, but is not subject to the provisions governing a contested case.

(5) The head of the promulgating agency or 1 or more persons designated by the head of the agency who have knowledge of the subject matter of the proposed rule shall be present at the public hearing and shall participate in the discussion of the proposed rule.

**24.241a Request by legislator for copies of proposed rules or changes in rules.**

Sec. 41a. A member of the legislature may annually submit a written or electronic request to the office of regulatory reform requesting that a copy of all proposed rules or changes in rules, or any designated proposed rules or changes in rules submitted to the office of regulatory reform for its approval, be mailed or electronically transmitted to the requesting member upon his or her receipt by the office of regulatory reform.

**24.242 Notice of public hearing; publication requirements; submission of copy to office of regulatory reform; publication of notice in Michigan register; distribution of copies of notice of public hearing; meeting of joint committee on administrative rules.**

Sec. 42. (1) Except as provided in section 44, at a minimum, an agency shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula.

(2) Additional methods that may be employed by the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications or posting on the agency's website.

(3) In addition to the requirements of subsection (1), the agency shall electronically submit a copy of the notice of public hearing to the office of regulatory reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall electronically file a copy of the notice of public hearing with the office of regulatory reform. Within 7 days after receipt of the notice of public hearing, the office of regulatory reform shall do all of the following before the public hearing:

(a) Electronically transmit a copy of the notice of public hearing to the committee.

(b) Provide notice electronically through publicly accessible internet media.

(4) After the office of regulatory reform electronically transmits a copy of the notice of public hearing to the committee, the committee shall electronically transmit copies of the notice of public hearing, not later than the next business day after receipt of the notice from the office of regulatory reform, to each member of the committee and to the members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

(5) After receipt of the notice of public hearing filed under subsection (3), the committee may meet to consider the proposed rule, take testimony, and provide the agency with the committee's informal response to the rule.

#### **24.244 Notice of public hearings on rules; exceptions to requirements; applicability of MCL 24.241 and 24.242 to rules promulgated under Michigan occupational safety and health act; "substantially similar" defined.**

Sec. 44. (1) Sections 41 and 42 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the legislative service bureau certificate of approval of the rule.

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590. However, notice of the proposed rule shall be published in the Michigan register at least 35 days before the submission of the rule to the secretary of state pursuant to section 46(1). A reasonable period, not to exceed 21 days, shall be provided for the submission of written or electronic comments and views following publication in the Michigan register.

(3) For purposes of subsection (2), "substantially similar" means identical, with the exception of style or format differences needed to conform to this or other state laws, as determined by the office of regulatory reform pursuant to section 45(1).

#### **24.245 Approval of rules by legislative service bureau and office of regulatory reform; agency reports; regulatory impact statement; fiscal agency reports.**

Sec. 45. (1) The agency shall submit the proposed rule to the legislative service bureau for its formal certification. The submission to the legislative service bureau for formal certification shall be in the form of 4 paper copies and electronic transmission. The legislative

service bureau shall promptly issue a certificate of approval indicating a determination that a proposed rule is proper as to all matters of form, classification, and arrangement. The office of regulatory reform may approve a proposed rule if it considers the proposed rule to be legal.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a synopsis of the comments contained in the public hearing record and shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office of regulatory reform shall transmit by letter to the committee copies of the rule, the agency reports, and certificates of approval from the legislative service bureau and the office of regulatory reform. The office of regulatory reform shall also electronically submit a copy of the rule, agency reports, and certificates of approval to the committee. The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under section 45a(7).

(3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a regulatory impact statement containing all of the following information:

(a) A comparison of the proposed rule to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

(b) An identification of the behavior and frequency of behavior that the rule is designed to alter.

(c) An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.

(d) An estimate of the change in the frequency of the targeted behavior expected from the rule.

(e) An identification of the businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule.

(f) An identification of any reasonable alternatives to regulation pursuant to the proposed rule that would achieve the same or similar goals.

(g) A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms.

(h) An estimate of the cost of rule imposition on the agency promulgating the rule.

(i) An estimate of the actual statewide compliance costs of the proposed rule on individuals.

(j) An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.

(k) An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.

(l) An identification of the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule.

(m) An analysis of the costs of compliance for all small businesses affected by the proposed rule, including costs of equipment, supplies, labor, and increased administrative costs.

(n) An identification of the nature and estimated cost of any legal consulting and accounting services that small businesses would incur in complying with the proposed rule.

(o) An estimate of the ability of small businesses to absorb the costs estimated under subdivisions (l) through (n) without suffering economic harm and without adversely affecting competition in the marketplace.

(p) An estimate of the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

(q) An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

(r) A statement describing the manner in which the agency reduced the economic impact of the rule on small businesses or a statement describing the reasons such a reduction was not feasible.

(s) A statement describing whether and how the agency has involved small businesses in the development of the rule.

(t) An estimate of the primary and direct benefits of the rule.

(u) An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.

(v) An estimate of any increase in revenues to state or local governmental units as a result of the rule.

(w) An estimate of any secondary or indirect benefits of the rule.

(x) An identification of the sources the agency relied upon in compiling the regulatory impact statement.

(y) Any other information required by the office of regulatory reform.

(4) The agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office of regulatory reform at least 28 days before the public hearing required pursuant to section 42. Before the public hearing can be held, the regulatory impact statement must be approved by the office of regulatory reform. The agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing.

(5) The committee shall electronically transmit to the senate fiscal agency and the house fiscal agency a copy of each rule and regulatory impact statement filed with the committee, as well as a copy of the agenda identifying the proposed rules to be considered by the committee. The senate fiscal agency and the house fiscal agency shall analyze each proposed rule for possible fiscal implications that, if the rule were adopted, would result in additional appropriations in the current fiscal year or commit the legislature to an appropriation in a future fiscal year. The senate fiscal agency and the house fiscal agency shall electronically report their findings to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.

(6) Subsections (2), (3), and (4) do not apply to a rule that is promulgated under sections 33, 44, and 48.

#### **24.245a Joint committee on administrative rules; review; filing notice of objection; effect; actions by legislature; filing of rules by office of regulatory reform; withdrawal and resubmission of rules.**

Sec. 45a. (1) Except as otherwise provided for in subsections (7) and (8), after receipt by the committee of the notice of transmittal specified in section 45(2), the committee has 21 calendar days in which to consider the rule and to object to the rule by filing a notice

of objection approved by a concurrent majority of the committee members. A notice of objection may only be approved by the committee if the committee affirmatively determines by a concurrent majority that 1 or more of the following conditions exist:

(a) The agency lacks statutory authority for the rule.

(b) The agency is exceeding the statutory scope of its rule-making authority.

(c) There exists an emergency relating to the public health, safety, and welfare that would warrant disapproval of the rule.

(d) The rule is in conflict with state law.

(e) A substantial change in circumstances has occurred since enactment of the law upon which the proposed rule is based.

(f) The rule is arbitrary or capricious.

(g) The rule is unduly burdensome to the public or to a licensee licensed by the rule.

(2) If the committee does not file a notice of objection within the time period prescribed in subsection (1), the office of regulatory reform may immediately file the rule, with the certificates of approval, with the secretary of state. The rule shall take effect 7 days after the date of its filing unless a later date is indicated within the rule.

(3) If the committee files a notice of objection within the time period prescribed in subsection (1), the committee chair, the alternate chair, or any member of the committee shall cause bills to be introduced in both houses of the legislature simultaneously. Each house shall place the bill or bills directly on its calendar. The bills shall contain 1 or more of the following:

(a) A rescission of a rule upon its effective date.

(b) A repeal of the statutory provision under which the rule was authorized.

(c) A bill staying the effective date of the proposed rule for up to 1 year.

(4) The notice of objection filed under subsection (3) stays the ability of the office of regulatory reform to file the rule with the secretary of state for the following time periods:

(a) Except as provided in subdivision (b) or (c), 21 consecutive calendar days.

(b) If both houses of the legislature are not in session for more than 14 consecutive calendar days but 21 or less consecutive calendar days following the filing of a notice of objection, the 21-day time period described in subdivision (a) shall toll, with the remainder of the 21-day time period available for consideration upon the return of both houses. In no case under this subdivision shall the combined time period for consideration by the committee and full legislature exceed 63 consecutive calendar days.

(c) If both houses of the legislature are not in session more than 21 consecutive calendar days following the filing of a timely notice of objection, the 21-day time period described in subdivision (a) shall toll, with the remainder of the 21-day time period available for consideration upon the return of both houses.

(5) If the legislation introduced pursuant to subsection (3) is defeated in either house and if the vote by which the legislation failed to pass is not reconsidered in compliance with the rules of that house, or if legislation introduced pursuant to subsection (3) is not adopted by both houses within the time period specified in subsection (4), the office of regulatory reform may file the rule with the secretary of state. Upon filing with the secretary of state, the rule shall take effect 7 days after the filing date unless a later date is specified within the rule.

(6) If the legislation introduced pursuant to subsection (3) is enacted by the legislature and presented to the governor within the 21-day period, the rules do not become effective unless the legislation is vetoed by the governor as provided by law. If the governor vetoes the legislation, the office of regulatory reform may file the rules immediately. The rule shall take effect 7 days after the date of its filing unless a later effective date is indicated within the rule.

(7) An agency may withdraw a proposed rule under the following conditions:

(a) With permission of the committee chair and alternate chair, the agency may withdraw the rule and resubmit it. If permission to withdraw is granted, the 21-day time period described in subsection (1) is tolled until the rule is resubmitted, except that the committee shall have at least 7 calendar days after resubmission to consider the resubmitted rule. The period of time between withdrawal and resubmission of the rule is not counted toward the 63-day limit for rule consideration described in subsection (4)(b).

(b) Without permission of the committee chair and alternate chair, the agency may withdraw the rule and resubmit it. If permission to withdraw is not granted, a new and untolled 21-day time period described in subsection (1) shall begin upon resubmission of the rule to the committee for consideration.

(8) Subsections (1) through (5) do not apply to rules adopted under sections 33, 44, and 48.

#### **24.249 Filed rules; transmission.**

Sec. 49. (1) The secretary of state shall transmit, after copies of rules are filed in his or her office, a paper copy on which the day and hour of that filing have been indorsed, as follows:

(a) To the secretary of the committee and the office of regulatory reform.

(b) To the secretary of the senate and the clerk of the house of representatives for distribution by them to each member of the senate and the house of representatives. When the legislature is not in session, or is in session but will not meet for more than 10 days after the secretary and clerk have received the rules, the secretary and clerk shall mail or electronically transmit 1 copy to each member of the legislature at his or her home address.

(2) The secretary of the senate and clerk of the house of representatives shall present the rules to the senate and the house of representatives.

#### **24.250 Legislative standing committees; functions.**

Sec. 50. (1) When the legislature is in session, the committee shall electronically notify the appropriate standing committee of each house of the legislature when rules have been transmitted to the committee by the secretary of state. If the committee determines that a hearing on those rules is to be held, it shall electronically notify the chairs of the standing committees. All members of the standing committees may be present and take part in the hearing.

(2) The chair or a designated member of the standing committee should be present at the hearing, but his or her absence does not affect the validity of the hearing.

#### **24.252 Suspension of rules.**

Sec. 52. (1) If authorized by concurrent resolution of the legislature, the committee, acting between regular sessions, may suspend a rule or a part of a rule promulgated during the interim between regular sessions.

(2) The committee shall electronically notify the agency promulgating the rule, the secretary of state, the department of management and budget, and the office of regulatory reform of any rule or part of a rule the committee suspends. A rule or part of a rule suspended under this section shall not be published in the Michigan register or in the Michigan administrative code while suspended.

(3) A rule suspended by the committee continues to be suspended not longer than the end of the next regular legislative session.

### **24.253 Annual regulatory plan.**

Sec. 53. (1) Each agency shall prepare an annual regulatory plan that reviews the agency's rules. The annual regulatory plan shall be electronically transmitted to the office of regulatory reform.

(2) In completing the annual regulatory plan required by this section, the agency shall identify the rules it reasonably expects to process in the next year, the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year.

(3) The annual regulatory plans completed pursuant to this section are advisory only and do not otherwise bind the agency or in any way prevent additional action.

(4) Annual regulatory plans completed under subsection (1) shall be electronically filed with the office of regulatory reform by July 1 of each year. After the office of regulatory reform approves the plan for review, the office of regulatory reform shall electronically provide a copy of the plan of review to the committee. The committee shall electronically provide a copy of each agency plan of review, not later than the next business day after receipt of the plan of review from the office of regulatory reform, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of rules the agency may propose.

This act is ordered to take immediate effect.

Approved March 10, 2004.

Filed with Secretary of State March 10, 2004.

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**[No. 24]**

**(HB 5154)**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 8303, 8304, 8306, and 8316 (MCL 324.8303, 324.8304, 324.8306, and 324.8316), sections 8303, 8304, and 8306 as amended by 2002 PA 418.

*The People of the State of Michigan enact:*

### **324.8303 Definitions; D to G.**

Sec. 8303. (1) "Day care center" means a facility, other than a private residence, which receives 1 or more preschool or school-age children for care for periods of less than



24 hours a day, at which the parents or guardians are not immediately available to the child, and which is licensed as a child care organization by the Michigan family independence agency under 1973 PA 116, MCL 722.111 to 722.128.

(2) “Defoliant” means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) “Department” means the department of agriculture.

(4) “Desiccant” means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) “Device” means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(6) “Direct supervision” means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location directing the application of a restricted use pesticide by an uncertified applicator.

(b) The private agricultural applicator supervises the uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) “Director” means the director of the department or his or her authorized representative.

(8) “Distribute” means to offer for sale, hold for sale, sell, barter, ship, or deliver pesticides in this state.

(9) “Envelope monitoring” means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) “Environment” includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) “EPA” means the United States environmental protection agency.

(12) “FIFRA” means the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 USC 136 to 136i, 136j to 136r and 136s to 136y.

(13) “Fungi” means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(14) “General use pesticide” means a pesticide that is not a restricted use pesticide.

(15) “Groundwater” means underground water within the zone of saturation.

(16) “Groundwater protection rule” means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have or may contribute to the contamination of groundwater and that specifies the standard’s scope, region of implementation, and implementation period. As used in this subsection:

(a) “Structures, activities, and procedures” includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) “Scope” means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) “Region of implementation” may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) “Groundwater resource protection level” means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of public health using risk assessment protocol established by rule under this part.

(18) “Groundwater resource response level” means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

### **324.8304 Definitions; I to M.**

Sec. 8304. (1) “Inert ingredient” means an ingredient that is not active.

(2) “Ingredient statement” means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) “Insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) “Insecticide” means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) “Integrated pest management” means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) “Integrated pest management program” means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:

(i) Site evaluation, including site description, inspection, and monitoring and the concept of threshold levels.

(ii) Consideration of the relationship between pest biology and pest management methods.

(iii) Consideration of all available pest management methods, including population reduction techniques, such as mechanical, biological, and chemical techniques and pest prevention techniques, such as habitat modification.

(iv) Pest control method selection, including consideration of the impact on human health and the environment.

(v) Continual evaluation of the integrated pest management program to determine the program’s effectiveness and the need for program modification.

(b) Recordkeeping which shall be maintained by the applicator and which shall include all of the following:

(i) The site address.

(ii) The date of service.

(iii) The target pest or pests.

(iv) The inspection report, including the number of pests found or reported, and the conditions conducive to pest infestation.

(v) The pest management recommendations made by the applicator, such as structural or habitat modification.

(vi) The structural or habitat modification or other measures that were initiated as a part of the pest management program.

(vii) The name of each pesticide used.

(viii) Quantity of each pesticide used.

(ix) The location of the area or room or rooms where pesticides were applied.

(x) The name of the applicator.

(xi) The name of the pest control firm, if a firm is employed, and the emergency telephone number.

(c) Provision of the following information to the building manager:

(i) The integrated pest management program and initial service inspection record, which shall be provided at the time of, or made available electronically within 48 hours after, the initial service.

(ii) A record that includes the information specified in subdivision (b), which shall be provided upon or made available electronically within 48 hours after the completion of each inspection, application, or service call.

(d) The acceptance of responsibility by the building manager to post signs provided by the pesticide applicator in compliance with rules promulgated under section 8325.

(7) “Label” means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(8) “Labeling” means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) “Maximum contaminant level” means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300j-25, and regulations promulgated under that act.

(10) “Method detection limit” means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(11) “Minor use” means the use of a pesticide on a crop, animal, or site where any of the following exist:

(a) The total United States acreage for the crop or site is less than 300,000 acres.

(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(12) “Misbranded” applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) “Molluscicide” means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

### **324.8306 Definitions; R to W.**

Sec. 8306. (1) “Registered applicator” means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) “Ready-to-use pesticide” means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) “Registrant” means a person who is required to register a pesticide pursuant to this part.

(4) “Restricted use pesticide” means a pesticide classified for restricted use by the EPA or the director.

(5) “Restricted use pesticide dealer” means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) “Rodenticide” means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) “School” means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) “Supervise” means directing the application of a pesticide with or without being physically present during the application.

(9) “Unreasonable adverse effect on the environment” means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) “Use of a pesticide” means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) “Vendor” means a person who sells or distributes pesticides.

(12) “Violates this part” or “violation of this part” means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) “Weed” means a plant which grows where it is not wanted.

### **324.8316 Notice of pesticide application at school or day care center.**

Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

(2) The primary administrator of a school or day care center or his or her designee shall annually notify the parents or guardians of children attending that school or cared for at that day care center that the parents or guardians will receive advance notice of the

application of a pesticide, other than a bait or gel formulation, at the school or day care center. The primary administrator of a school or his or her designee shall give the annual notification not more than 30 days after the beginning of the school year, and the primary administrator of a day care center or his or her designee shall give the annual notification in September.

(3) An annual notification under subsection (2) shall satisfy all of the following requirements:

(a) Be in writing.

(b) Specify 2 methods by which advance notice of the application of a pesticide will be given at least 48 hours before the application. The first method shall be by posting at the entrances to the school or day care center. Subject to subdivision (c), the second method shall be 1 of the following:

(i) Posting in a public, common area of the school or day care center, other than an entrance.

(ii) E-mail.

(iii) A telephone call by which direct contact is made with a parent or guardian of a student of the school or a child under the care of the day care center or a message is recorded on an answering machine.

(iv) Providing students of the school or children under the care of the day care center with a written notice to be delivered to their parents or guardians.

(v) Posting on the school's or day care center's website.

(c) State that, in addition to notice under subdivision (b), parents or guardians are entitled to receive the notice by first-class United States mail postmarked at least 3 days before the application, if they so request, and the manner in which such a request shall be made.

(d) For a school, inform parents and guardians that they may review the school's integrated pest management program, if any, and records on any pesticide applications.

(e) For a school, provide the name, telephone number, and, if applicable, e-mail address of the person at the school building responsible for pesticide application procedures.

(4) An advance notice of application of a pesticide, other than a bait or gel formulation, shall contain all of the following information:

(a) A statement that a pesticide is expected to be applied.

(b) The target pest or pests.

(c) The approximate location of the application.

(d) The date of the application.

(e) The name, telephone number, and, if available, e-mail address of a contact person at the school or day care center responsible for maintaining records with specific information on pest infestation and actual pesticide application as required by rules.

(f) A toll-free telephone number for a national pesticide information center recognized by the department and a telephone number for pesticide information from the department.

(5) Before applying a pesticide, other than a bait or gel formulation, a school or day care center shall provide advance notice to parents and guardians consistent with subsections (3)(b) to (e) and (4). However, in an emergency, a school or day care center may apply a pesticide without providing advance notice to parents or guardians. Promptly after the emergency pesticide application, the school or day care center shall give parents

or guardians notice of the emergency pesticide application that otherwise meets the requirements of subsection (3)(b) and (c). The notice shall contain a statement that a pesticide was applied and shall meet the requirements of subsection (4)(b) to (f).

(6) Liquid spray or aerosol insecticide applications shall not be made in a room of a school building or day care center building unless the room will be unoccupied by students or children for not less than 4 hours after the application or unless the product label requires a longer reentry period. The building manager shall be notified of the reentry restrictions by the applicator.

(7) The department shall do both of the following:

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model integrated pest management policy for schools, in consultation with the department of education and the pesticide advisory committee created in section 8326, and make the policy available to all school districts, intermediate school districts, public school academies, and private schools.

(b) Encourage local and intermediate school boards and boards of directors of public school academies to do both of the following:

(i) Adopt and follow the model integrated pest management policy developed under subdivision (a).

(ii) Require appropriate staff to obtain periodic updates and training on integrated pest management from experts on the subject.

(8) Subsections (1) to (7) do not apply to sanitizers, germicides, disinfectants, or antimicrobial agents.

This act is ordered to take immediate effect.

Approved March 10, 2004.

Filed with Secretary of State March 10, 2004.

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**[No. 25]**

**(SB 842)**

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date,” (MCL 257.1 to 257.923) by adding section 616a.

*The People of the State of Michigan enact:*

**257.616a Portable signal preemptive device; prohibitions; penalties; exceptions; definitions.**

Sec. 616a. (1) Except as provided in subsections (3) and (4), a person shall not do any of the following:

(a) Possess a portable signal preemption device.

(b) Use a portable signal preemption device.

(c) Sell a portable signal preemption device to a person other than a person described in subsection (3).

(d) Purchase a portable signal preemption device for use other than a duty as described in subsections (3) and (4).

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

(a) A person who violates subsection (1)(a) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both.

(b) Except as provided in subdivisions (c), (d), and (e), a person who violates subsection (1)(b) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(c) A person who violates subsection (1)(b), which violation results in a traffic accident, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$15,000.00, or both.

(d) A person who violates subsection (1)(b), which violation results in the serious impairment of a body function, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(e) A person who violates subsection (1)(b), which violation results in the death of another, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$25,000.00, or both.

(f) A person who violates subsection (1)(c) or (d) is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

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

(a) A law enforcement agency in the course of providing law enforcement services.

(b) A fire station or a firefighter in the course of providing fire prevention or fire extinguishing services.

(c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services.

(d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties.

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

(a) A mail or package delivery service or employee or agent of a mail or package delivery service in the course of shipping or delivering a portable signal preemption device.

(b) An employee or agent of a portable signal preemption device manufacturer or retailer in the course of his or her employment in providing, selling, manufacturing, or transporting a portable signal preemption device to an individual or agency described in this subsection.

(5) As used in this section:

(a) "Portable signal preemption device" means a device that, if activated by a person, is capable of changing a traffic control signal to green out of sequence.

(b) "Serious impairment of a body function" means that term as defined in section 58c.

**Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

This act is ordered to take immediate effect.

Approved March 15, 2004.

Filed with Secretary of State March 16, 2004.

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**[No. 26]**

**(SB 843)**

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 12e of chapter XVII (MCL 777.12e), as added by 2002 PA 34.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.12e Chapter 257; felonies.**

Sec. 12e. This chapter applies to the following felonies enumerated in sections 601 to 624b of chapter VI of the Michigan vehicle code, 1949 PA 300, within chapter 257 of the Michigan Compiled Laws:

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
257.601b(3)	Person	C	Moving violation causing death to construction worker	15
257.601c(2)	Person	C	Moving violation causing death to operator of implement of husbandry	15



257.602a(2)	Pub saf	G	Fleeing and eluding — fourth degree	2
257.602a(3)	Pub saf	E	Fleeing and eluding — third degree	5
257.602a(4)	Person	D	Fleeing and eluding — second degree	10
257.602a(5)	Person	C	Fleeing and eluding — first degree	15
257.616a(2)(b)	Pub saf	G	Using a signal preemption device	2
257.616a(2)(c)	Pub saf	E	Using a signal preemption device causing a traffic accident	5
257.616a(2)(d)	Person	D	Using a signal preemption device causing serious impairment of a body function	10
257.616a(2)(e)	Person	C	Using a signal preemption device causing death	15
257.616a(2)(f)	Pub ord	G	Selling or purchasing a signal preemption device	2
257.617(2)	Person	E	Failure to stop at scene of accident resulting in serious impairment or death	5
257.617(3)	Person	C	Failure to stop at scene of accident resulting in death when at fault	15

**Effective date.**

Enacting section 1. This amendatory act takes effect 90 days after it is enacted.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 842 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved March 15, 2004.

Filed with Secretary of State March 16, 2004.

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**Compiler's note:** Senate Bill No. 842, referred to in enacting section 2, was filed with the Secretary of State March 16, 2004, and became PA 2004, No. 25, Eff. June 14, 2004.

**[No. 27]****(SB 703)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 80205 (MCL 324.80205), as added by 2000 PA 229; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**324.80205 Operation of personal watercraft; requirements.**

Sec. 80205. (1) Until 5 years after the effective date of the 2004 amendatory act that amended this section, except as otherwise provided in this section, a person shall not

operate a personal watercraft on the waters of this state unless each person riding on or being towed behind the personal watercraft is wearing a type I, type II, or type III personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) Beginning 5 years after the effective date of the 2004 amendatory act that amended this section, except as otherwise provided in this section, a person shall not operate a personal watercraft on the waters of this state unless each person 12 years of age or older riding on or being towed behind the personal watercraft is wearing a type I, type II, or type III personal flotation device as described in R 281.1234 of the Michigan administrative code.

(3) Beginning 5 years after the effective date of the 2004 amendatory act that amended this section, a person shall not operate a personal watercraft on the waters of this state unless each person on board or being towed by the personal watercraft who is less than 12 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code.

(4) A person shall not operate a personal watercraft on the waters of this state unless each person on board the personal watercraft is wearing a personal flotation device that is not inflatable.

(5) A person shall not operate a personal watercraft on the waters of this state if a child who is under 7 years of age is on board or being towed behind the personal watercraft unless the child is in the company of his or her parent or guardian or a designee of the parent or guardian.

(6) While operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch on the waters of this state, a person shall have the lanyard attached to his or her person, clothing, or personal flotation device as is appropriate for the personal watercraft.

(7) A person shall not operate a personal watercraft on the waters of this state during the period that begins 1 hour before sunset and ends at 8 a.m. As used in this subsection, “sunset” means that time as determined by the national weather service.

(8) A person operating a personal watercraft on the waters of this state shall not cross within 150 feet behind another vessel, other than a personal watercraft, unless the person is operating the personal watercraft at slow—no wake speed.

(9) A person shall not operate a personal watercraft on the waters of this state where the water depth is less than 2 feet, as determined by vertical measurement, unless 1 or both of the following circumstances exist:

- (a) The personal watercraft is being operated at slow—no wake speed.
- (b) The personal watercraft is being docked or launched.

(10) A person shall operate a personal watercraft in a reasonable and prudent manner. A maneuver that unreasonably or unnecessarily endangers life, limb, or property, including, but not limited to, all of the following, constitutes reckless operation of a personal watercraft under section 80208:

- (a) Weaving through congested vessel traffic.
- (b) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed.
- (c) Waiting until the last possible moment before swerving to avoid a collision.

(11) A person shall not operate a personal watercraft on the waters of this state carrying more persons than the personal watercraft is designed to carry.

(12) A violation of subsection (11) is prima facie evidence of reckless operation of a watercraft under section 80208.

(13) A person operating a personal watercraft in excess of the speeds established under part 801 is guilty of reckless operation of a personal watercraft under section 80208.

(14) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with section 80164 under a permit issued by the department and at the time and place specified in the permit.

(15) The department shall annually prepare and submit to the standing committees of the senate and house of representatives with primary jurisdiction over marine safety issues an accident report related to the use of personal watercraft, the types of personal flotation devices that were being used, and the injuries that resulted.

**Repeal of section 1 of 2000 PA 229.**

Enacting section 1. Enacting section 1 of 2000 PA 229 is repealed.

**Repeal of MCL 324.80201 to 324.80222; effective date.**

Enacting section 2. Part 802 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80201 to 324.80222, is repealed effective March 23, 2012.

This act is ordered to take immediate effect.

Approved March 15, 2004.

Filed with Secretary of State March 16, 2004.

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**[No. 28]**

**(SB 588)**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments;

to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 2006 (MCL 500.2006), as amended by 2002 PA 316.

*The People of the State of Michigan enact:*

**500.2006 Payment of benefits on timely basis; payment of interest in alternative; failure to pay claims or interest as unfair trade practice; liability for claim pursuant to judgment; proof of loss; inability to pay claim; interest requirements; failure of reinsurer to pay benefits on timely basis; effect of inconsistency with certain acts; exceptions; processing and payment procedures; notices; violations; fines; definitions.**

Sec. 2006. (1) A person must pay on a timely basis to its insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant the benefits provided under the terms of its policy, or, in the alternative, the person must pay to its insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant 12% interest, as provided in subsection (4), on claims not paid on a timely basis. Failure to pay claims on a timely basis or to pay interest on claims as provided in subsection (4) is an unfair trade practice unless the claim is reasonably in dispute.

(2) A person shall not be found to have committed an unfair trade practice under this section if the person is found liable for a claim pursuant to a judgment rendered by a court of law, and the person pays to its insured, individual or entity directly entitled to benefits under its insured's contract of insurance, or third party tort claimant interest as provided in subsection (4).

(3) An insurer shall specify in writing the materials that constitute a satisfactory proof of loss not later than 30 days after receipt of a claim unless the claim is settled within the 30 days. If proof of loss is not supplied as to the entire claim, the amount supported by proof of loss shall be considered paid on a timely basis if paid within 60 days after receipt of proof of loss by the insurer. Any part of the remainder of the claim that is later supported by proof of loss shall be considered paid on a timely basis if paid within 60 days after receipt of the proof of loss by the insurer. If the proof of loss provided by the claimant contains facts that clearly indicate the need for additional medical information by the insurer in order to determine its liability under a policy of life insurance, the claim shall be considered paid on a timely basis if paid within 60 days after receipt of necessary medical information by the insurer. Payment of a claim shall not be untimely during any period in which the insurer is unable to pay the claim when there is no recipient who is legally able to give a valid release for the payment, or where the insurer is unable to determine who

is entitled to receive the payment, if the insurer has promptly notified the claimant of that inability and has offered in good faith to promptly pay the claim upon determination of who is entitled to receive the payment.

(4) If benefits are not paid on a timely basis the benefits paid shall bear simple interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum, if the claimant is the insured or an individual or entity directly entitled to benefits under the insured's contract of insurance. If the claimant is a third party tort claimant, then the benefits paid shall bear interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum if the liability of the insurer for the claim is not reasonably in dispute, the insurer has refused payment in bad faith and the bad faith was determined by a court of law. The interest shall be paid in addition to and at the time of payment of the loss. If the loss exceeds the limits of insurance coverage available, interest shall be payable based upon the limits of insurance coverage rather than the amount of the loss. If payment is offered by the insurer but is rejected by the claimant, and the claimant does not subsequently recover an amount in excess of the amount offered, interest is not due. Interest paid pursuant to this section shall be offset by any award of interest that is payable by the insurer pursuant to the award.

(5) If a person contracts to provide benefits and reinsures all or a portion of the risk, the person contracting to provide benefits is liable for interest due to an insured, an individual or entity directly entitled to benefits under its insured's contract of insurance, or a third party tort claimant under this section where a reinsurer fails to pay benefits on a timely basis.

(6) If there is any specific inconsistency between this section and sections 3101 to 3177 or the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the provisions of this section do not apply. Subsections (7) to (14) do not apply to an entity regulated under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. Subsections (7) to (14) do not apply to the processing and paying of medicaid claims that are covered under section 111i of the social welfare act, 1939 PA 280, MCL 400.111i.

(7) Subsections (1) to (6) do not apply and subsections (8) to (14) do apply to health plans when paying claims to health professionals, health facilities, home health care providers, and durable medical equipment providers, that are not pharmacies and that do not involve claims arising out of sections 3101 to 3177 or the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941. This section does not affect a health plan's ability to prescribe the terms and conditions of its contracts, other than as provided in this section for timely payment.

(8) Each health professional, health facility, home health care provider, and durable medical equipment provider in billing for services rendered and each health plan in processing and paying claims for services rendered shall use the following timely processing and payment procedures:

(a) A clean claim shall be paid within 45 days after receipt of the claim by the health plan. A clean claim that is not paid within 45 days shall bear simple interest at a rate of 12% per annum.

(b) A health plan shall notify the health professional, health facility, home health care provider, or durable medical equipment provider within 30 days after receipt of the claim by the health plan of all known reasons that prevent the claim from being a clean claim.

(c) A health professional, health facility, home health care provider, and durable medical equipment provider have 45 days, and any additional time the health plan permits, after receipt of a notice under subdivision (b) to correct all known defects. The 45-day time period in subdivision (a) is tolled from the date of receipt of a notice to a health professional, health

facility, home health care provider, or durable medical equipment provider under subdivision (b) to the date of the health plan's receipt of a response from the health professional, health facility, home health care provider, or durable medical equipment provider.

(d) If a health professional's, health facility's, home health care provider's, or durable medical equipment provider's response under subdivision (c) makes the claim a clean claim, the health plan shall pay the health professional, health facility, home health care provider, or durable medical equipment provider within the 45-day time period under subdivision (a), excluding any time period tolled under subdivision (c).

(e) If a health professional's, health facility's, home health care provider's, or durable medical equipment provider's response under subdivision (c) does not make the claim a clean claim, the health plan shall notify the health professional, health facility, home health care provider, or durable medical equipment provider of an adverse claim determination and of the reasons for the adverse claim determination within the 45-day time period under subdivision (a), excluding any time period tolled under subdivision (c).

(f) A health professional, health facility, home health care provider, or durable medical equipment provider shall bill a health plan within 1 year after the date of service or the date of discharge from the health facility in order for a claim to be a clean claim.

(g) A health professional, health facility, home health care provider, or durable medical equipment provider shall not resubmit the same claim to the health plan unless the time frame in subdivision (a) has passed or as provided in subdivision (c).

(9) Notices required under subsection (8) shall be made in writing or electronically.

(10) If a health plan determines that 1 or more services listed on a claim are payable, the health plan shall pay for those services and shall not deny the entire claim because 1 or more other services listed on the claim are defective. This subsection does not apply if a health plan and health professional, health facility, home health care provider, or durable medical equipment provider have an overriding contractual reimbursement arrangement.

(11) A health plan shall not terminate the affiliation status or the participation of a health professional, health facility, home health care provider, or durable medical equipment provider with a health maintenance organization provider panel or otherwise discriminate against a health professional, health facility, home health care provider, or durable medical equipment provider because the health professional, health facility, home health care provider, or durable medical equipment provider claims that a health plan has violated subsections (7) to (10).

(12) A health professional, health facility, home health care provider, durable medical equipment provider, or health plan alleging that a timely processing or payment procedure under subsections (7) to (11) has been violated may file a complaint with the commissioner on a form approved by the commissioner and has a right to a determination of the matter by the commissioner or his or her designee. This subsection does not prohibit a health professional, health facility, home health care provider, durable medical equipment provider, or health plan from seeking court action. A health plan described in subsection (14)(c)(iv) is subject only to the procedures and penalties provided for in subsection (13) and section 402 of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1402, for a violation of a timely processing or payment procedure under subsections (7) to (11).

(13) In addition to any other penalty provided for by law, the commissioner may impose a civil fine of not more than \$1,000.00 for each violation of subsections (7) to (11) not to exceed \$10,000.00 in the aggregate for multiple violations.

(14) As used in subsections (7) to (13):

(a) “Clean claim” means a claim that does all of the following:

(i) Identifies the health professional, health facility, home health care provider, or durable medical equipment provider that provided service sufficiently to verify, if necessary, affiliation status and includes any identifying numbers.

(ii) Sufficiently identifies the patient and health plan subscriber.

(iii) Lists the date and place of service.

(iv) Is a claim for covered services for an eligible individual.

(v) If necessary, substantiates the medical necessity and appropriateness of the service provided.

(vi) If prior authorization is required for certain patient services, contains information sufficient to establish that prior authorization was obtained.

(vii) Identifies the service rendered using a generally accepted system of procedure or service coding.

(viii) Includes additional documentation based upon services rendered as reasonably required by the health plan.

(b) “Health facility” means a health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) “Health plan” means all of the following:

(i) An insurer providing benefits under an expense-incurred hospital, medical, surgical, vision, or dental policy or certificate, including any policy or certificate that provides coverage for specific diseases or accidents only, or any hospital indemnity, medicare supplement, long-term care, or 1-time limited duration policy or certificate, but not to payments made to an administrative services only or cost-plus arrangement.

(ii) A MEWA regulated under chapter 70 that provides hospital, medical, surgical, vision, dental, and sick care benefits.

(iii) A health maintenance organization licensed or issued a certificate of authority in this state.

(iv) A health care corporation for benefits provided under a certificate issued under the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, but not to payments made pursuant to an administrative services only or cost-plus arrangement.

(d) “Health professional” means a health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

### **Effective date.**

Enacting section 1. This amendatory act takes effect 6 months after the date it is enacted into law and applies to all health care claims with dates of service on and after the effective date of this amendatory act.

This act is ordered to take immediate effect.

Approved March 15, 2004.

Filed with Secretary of State March 16, 2004.

**[No. 29]****(HB 4352)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 82131 (MCL 324.82131), as added by 1995 PA 58.

*The People of the State of Michigan enact:*

**324.82131 Display of lighted headlight and taillight required; applicability of section to snowmobile 25 years or older.**

Sec. 82131. (1) A person shall not operate a snowmobile without displaying a lighted headlight and a lighted taillight. However, the headlight shall not be covered with a lens cap of any color.

(2) This section does not apply to a snowmobile of a model year 25 years old or older.

This act is ordered to take immediate effect.

Approved March 19, 2004.

Filed with Secretary of State March 22, 2004.

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**[No. 30]****(HB 4675)**

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



repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending section 16611 (MCL 333.16611), as amended by 2003 PA 35.

*The People of the State of Michigan enact:*

**333.16611 Dentist, dental hygienist, or dental assistant; license or authorization required; deep scaling, root planing, and removal of calcareous deposits; qualifications for dental hygienist licensure; administration of intraoral block and infiltration anesthesia by dental hygienist; administration of local anesthesia or nitrous oxide analgesia; requirements; additional delegation of procedures; third party reimbursement; practice guidelines; definitions.**

Sec. 16611. (1) An individual shall not engage in the practice of dentistry, the practice as a dental hygienist, or the practice as a dental assistant unless he or she is licensed or otherwise authorized by this article.

(2) Deep scaling, root planing, and the removal of calcareous deposits may only be performed by an individual licensed or otherwise authorized by this article as a dental hygienist or a dentist.

(3) The department shall not issue a dental hygienist’s license to an individual unless the individual has graduated from a school or college for dental hygienists whose dental hygiene program is accredited by the commission on dental accreditation of the American dental association and approved by the department. The school or college must be accredited by a regional accrediting agency for colleges, universities, or institutions of higher education that is recognized by the United States department of education and approved by the department and must conduct a curriculum consisting of not less than 2 academic years for dental hygiene graduation with courses at the appropriate level to enable matriculation into a more advanced academic degree program.

(4) Upon delegation by a dentist under section 16215 and under the direct supervision of a dentist, a dental hygienist may administer intraoral block and infiltration anesthesia or nitrous oxide analgesia, or both, to a patient 18 years of age or older, if the following criteria are met:

(a) The dental hygienist has successfully completed a course in the administration of local anesthesia or nitrous oxide analgesia, or both, as applicable, offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association and approved by the department. A course described in this subdivision involving local anesthesia administration must contain a minimum of 15 hours didactic instruction and 14 hours of clinical experience. A course described in this subdivision involving nitrous oxide analgesia administration must contain a minimum of 4 hours of didactic instruction and 4 hours of clinical experience. The courses of instruction shall include content in all of the following:

- (i) In the case of local anesthesia, the following:
  - (A) Theory of pain control.
  - (B) Selection of pain control modalities.
  - (C) Anatomy.
  - (D) Neurophysiology.
  - (E) Pharmacology of local anesthetics.
  - (F) Pharmacology of vasoconstrictors.

- (G) Psychological aspects of pain control.
- (H) Systemic complications.
- (I) Techniques of maxillary anesthesia.
- (J) Techniques of mandibular anesthesia.
- (K) Infection control.
- (L) Local anesthesia medical emergencies.
- (ii) In the case of nitrous oxide analgesia, the following:
  - (A) Nitrous oxide analgesia medical emergency techniques.
  - (B) Pharmacology of nitrous oxide.
  - (C) Nitrous oxide techniques.
  - (D) If such a course is available, selection of pain control modalities.

(b) The dental hygienist has successfully completed a state or regional board-administered written examination on either or both of the following within 18 months of completion of the course work required under subdivision (a):

- (i) Local anesthesia.
- (ii) Nitrous oxide analgesia, if such an examination is available and approved by the department.

(c) The dental hygienist maintains and can show evidence of current certification in basic or advanced cardiac life support in compliance with R 338.11701 of the Michigan administrative code.

(5) Application for certification in the administration of local anesthesia and nitrous oxide under subsection (4) is at the discretion of each individual dental hygienist. The department or its designee shall issue a certificate to a dental hygienist who meets the criteria in subsection (4) following the initial completion of the requirements to administer local anesthesia or nitrous oxide, or both. The certificate is not subject to renewal but is part of the dental hygienist's permanent record and must be prominently displayed in the dental hygienist's principal place of employment. The fee for the person seeking certification for completion of the requirements of subsection (4) is \$10.00.

(6) Monitoring and assisting the administration of nitrous oxide analgesia is at the discretion of each individual registered dental assistant who fulfills the applicable conditions imposed in subsection (7).

(7) In addition to the rules promulgated by the department under this part, upon delegation by a dentist under section 16215 and under the direct supervision of a dentist, a registered dental assistant may assist and monitor the administration of nitrous oxide analgesia by the dentist or dental hygienist if the registered dental assistant has successfully completed a course in the assisting and monitoring of the administration of nitrous oxide analgesia offered by a dental or dental assisting program accredited by the commission on dental accreditation of the American dental association and approved by the department. The course must contain a minimum of 5 hours of didactic instruction and include content in all of the following:

- (a) Nitrous oxide analgesia medical emergencies techniques.
- (b) Pharmacology of nitrous oxide.
- (c) Nitrous oxide techniques.