

(5) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the department executed pursuant to this section may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the order or permit may be rejected by the department as being untimely.

324.3113 New or increased use of waters for sewage or other waste disposal purposes; filing information; permit; conditions; complaint; petition; contested case hearing; rejection of petition.

Sec. 3113. (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the department an application setting forth the information required by the department, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

(2) If a permit is granted, the department shall condition the permit upon such restrictions that the department considers necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 3109.

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit application may be rejected by the department as being untimely.

324.3115 Violations; civil or criminal liability; venue; jurisdiction; penalties; knowledge attributable to defendant; lien; setoff.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit, order, rule, or stipulation of the department. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than \$2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit, order, rule, or stipulation of the department, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the

department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (1), a fine of not less than \$500,000.00 and not more than \$5,000,000.00.

(4) Upon a finding by the court that the actions of a criminal defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a fine of not less than \$1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsections (3) and (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person should observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) A civil fine or other award ordered paid pursuant to this section shall do both of the following:

(a) Be payable to the state of Michigan and credited to the general fund.

(b) Constitute a lien on any property, of any nature or kind, owned by the defendant.

(8) A lien under subsection (7)(b) shall take effect and have priority over all other liens and encumbrances except those filed or recorded prior to the date of judgment only if notice of the lien is filed or recorded as required by state or federal law.

(9) A lien filed or recorded pursuant to subsection (8) shall be terminated according to the procedures required by state or federal law within 14 days after the fine or other award ordered to be paid is paid.

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

324.3118 Storm water discharge fees.

Sec. 3118. (1) Until October 1, 2009, the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows:

(a) A 1-time fee of \$400.00 is required for a permit related solely to a site of construction activity for each permitted site. The fee shall be submitted by the permit applicant with his or her application for an individual permit or for a certificate of coverage under a general permit. For a permit by rule, the fee shall be submitted by the construction site permittee along with his or her notice of coverage. A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit. Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule.

(b) An annual fee of \$260.00 is required for a permit related solely to a storm water discharge associated with industrial activity or from a commercial site for which the department determines a permit is needed.

(c) An annual fee of \$500.00 is required for a permit for a municipal separate storm sewer system, unless the permit is issued to a city, a village, a township, or a county or is a single permit authorization for municipal separate storm sewer systems in multiple locations statewide.

(d) An annual fee for a permit for a municipal separate storm sewer system issued to a city, village, or township shall be determined by its population in an urbanized area as defined by the United States bureau of the census. The fee shall be based on the latest available decennial census as follows:

(i) For a population of 1,000 people or fewer, the annual fee is \$500.00.

(ii) For a population of more than 1,000 people, but fewer than 3,001 people, the annual fee is \$1,000.00.

(iii) For a population of more than 3,000 people, but fewer than 10,001 people, the annual fee is \$2,000.00.

(iv) For a population of more than 10,000 people, but fewer than 30,001 people, the annual fee is \$3,000.00.

(v) For a population of more than 30,000 people, but fewer than 50,001 people, the annual fee is \$4,000.00.

(vi) For a population of more than 50,000 people, but fewer than 75,001 people, the annual fee is \$5,000.00.

(vii) For a population of more than 75,000 people, but fewer than 100,001 people, the annual fee is \$6,000.00.

(viii) For a population of more than 100,000 people, the annual fee is \$7,000.00.

(e) An annual fee of \$3,000.00 is required for a permit for a municipal separate storm sewer system issued to a county.

(f) An annual fee for a single municipal separate storm sewer systems permit authorizing a state or federal agency to operate municipal separate storm sewer systems in multiple locations statewide shall be determined in accordance with a memorandum of understanding between that state or federal agency and the department and shall be based on the projected needs by the department to administer the permit.

(2) The permit fees identified in subsection (1) are nonrefundable.

(3) A person possessing a permit not related solely to a site of construction activity as of January 1 shall be assessed a fee. The department shall notify those persons of their fee assessments by February 1. Payment shall be postmarked no later than March 15. Failure by the department to send a fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve that person of his or her obligation to pay the fee. If the department does not meet the February deadline for sending the fee assessment, the fee assessment is due not later than 45 days after receiving a fee notification.

(4) If a storm water permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.

(5) The department shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(6) The department shall forward all fees and interest payments collected under this section to the state treasurer for deposit into the fund.

(7) The department shall make payment of the required fee assessed under this section a condition of issuance or reissuance of a permit not related solely to a site of construction activity.

(8) In addition to any other penalty provided in this part, if a person fails to pay the fee required under this section by its due date, the person is in violation of this part and the department may undertake enforcement actions as authorized under this part.

(9) The attorney general may bring an action to collect overdue fees and interest payments imposed under this section.

(10) If the permit is for a municipal separate storm sewer system and the population served by that system is different than the latest decennial census, the permittee may appeal the annual fee determination and submit written verification of actual population served by the municipal separate storm sewer system.

(11) A person who wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal, in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30 days of the department's fee notification under subsection (3).

(12) As used in this section and section 3119:

(a) "Certificate of coverage" means a document issued by the department that authorizes a discharge under a general permit.

(b) "Clean water act" means the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1273 to 1274, 1281, 1282 to 1293, 1294 to 1301, 1311 to 1313, 1314 to 1330, 1341 to 1346, 1361 to 1375, 1376 to 1377, and 1381 to 1387.

(c) "Construction activity" means a human-made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size, for which a national permit is required pursuant to 40 C.F.R. 122.26(a), and which is described as a construction activity in 40 C.F.R. 122.26(b)(14)(x). Construction activity includes clearing, grading, and excavating activities. Construction activity does not include the practice of clearing, plowing, tilling soil, and harvesting for the purpose of crop production.

(d) "Fee" means a storm water discharge fee authorized under this section.

(e) "Fund" means the storm water fund created in section 3119.

(f) “General permit” means a permit issued authorizing a category of similar discharges.

(g) “Individual permit” means a site-specific permit.

(h) “Municipal separate storm sewer system” means all separate storm sewers that are owned or operated by the United States or a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district or similar entity, or a designated or approved management agency under section 208 of the clean water act, 33 U.S.C. 1288, that discharges to waters of the state. Municipal separate storm sewer system includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. Municipal separate storm sewer system does not include separate storm sewers in very discrete areas, such as individual buildings.

(i) “Notice of coverage” means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity.

(j) “Permit” or “storm water discharge permit” means a permit authorizing the discharge of wastewater or any other substance to surface waters of the state under the national pollutant discharge elimination system, pursuant to the clean water act or this part and the rules and regulations promulgated under that act or this part.

(k) “Public body” means the United States, the state of Michigan, a city, village, township, county, school district, public college or university, or single purpose governmental agency, or any other body which is created by federal or state statute or law.

(l) “Separate storm sewer system” means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:

(i) The system is not a combined sewer where storm water mixes with sanitary wastes.

(ii) The system is not part of a publicly owned treatment works.

(m) “Storm water” means storm water runoff, snowmelt runoff, and surface runoff and drainage.

(n) “Storm water discharge associated with industrial activity” means a point source discharge of storm water from a facility which is defined as an industrial activity under 40 C.F.R. 122.26(b)(14)(i-ix and xi).

324.3119 Storm water fund.

Sec. 3119. (1) The storm water fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(4) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) Review of storm water permit applications.

- (b) Storm water permit development, issuance, reissuance, modification, and termination.
 - (c) Surface water monitoring to support the storm water permitting process.
 - (d) Assessment of compliance with storm water permit conditions.
 - (e) Enforcement against storm water permit violations.
 - (f) Classification of storm water control facilities.
 - (g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational material to assist persons regulated under this part.
 - (h) Regional or statewide public education to enhance the effectiveness of storm water permits.
- (5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part.
- (6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section, authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund.
- (7) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's storm water program that were funded by the fund. This report shall include, at a minimum, all of the following:
- (a) The number of full-time equated positions performing each of the following functions:
 - (i) Permit issuance and development.
 - (ii) Compliance.
 - (iii) Enforcement.
 - (b) The number of new permit applications received by the department in the preceding year.
 - (c) The number of renewal permits in the preceding year.
 - (d) The number of permit modifications requested in the preceding year.
 - (e) The number of staff hours dedicated to each of the fee categories listed in section 3118.
 - (f) The number of permits issued for fee categories listed in section 3118.
 - (g) The average number of days required for review of a permit from the date the permit application is determined to be administratively complete.
 - (h) The number of permit applications denied.
 - (i) The number of permit applications withdrawn by the applicant.
 - (j) The percentage and number of permit applications that were reviewed for administrative completeness within 10 days of receipt by the department.
 - (k) The percentage and number of permit applications submitted to the department that were administratively complete as received.

(l) The percentage and number of new permit applications for which a final action was taken by the department within 180 days.

(m) The percentage and number of permit renewals and modifications processed within the required time.

(n) The number of permits reopened by the department.

(o) The number of unfilled positions dedicated to the department's storm water program.

(p) The amount of revenue in the fund at the end of the fiscal year.

324.3120 New or increased use permit; application and annual permit fees; definitions.

Sec. 3120. (1) Until October 1, 2009, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

(a) For an EPA major facility permit, \$750.00.

(b) For an EPA minor facility individual permit, a CSO permit, or a wastewater stabilization lagoon individual permit, \$400.00.

(c) For an EPA minor facility general permit, \$75.00.

(2) Within 180 days after receipt of a complete application for a new or increased use permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(3) By September 30 of the year following the submittal of a complete application for reissuance of a permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(4) If the department fails to make a decision on an application within the applicable time period under subsection (2) or (3), the department shall return to the applicant the application fee submitted under subsection (1) and the applicant shall not be subject to an application fee and shall receive a 15% annual discount on an annual permit fee required for a permit issued based upon that application.

(5) Until October 1, 2009, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

(a) For an industrial or commercial facility that is an EPA major facility, \$8,700.00.

(b) For an industrial or commercial facility that is an EPA minor facility, the following amounts:

(i) For a general permit for a low-flow facility, \$150.00.

(ii) For a general permit for a high-flow facility, \$400.00.

(iii) For an individual permit for a low-flow facility, \$1,650.00.

(iv) For an individual permit for a high-flow facility, \$3,650.00.

(c) For a municipal facility that is an EPA major facility, the following amounts:

(i) For an individual permit for a facility discharging 500 MGD or more, \$213,000.00.

(ii) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, \$20,000.00.

(iii) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, \$13,000.00.

(iv) For an individual permit for a facility discharging less than 10 MGD, \$5,500.00.

(d) For a municipal facility that is an EPA minor facility, the following amounts:

(i) For an individual permit for a facility discharging 10 MGD or more, \$3,775.00.

(ii) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, \$3,000.00.

(iii) For an individual permit for a facility discharging less than 1 MGD, \$1,950.00.

(iv) For a general permit for a high-flow facility, \$600.00.

(v) For a general permit for a low-flow facility, \$400.00.

(e) For a municipal facility that is a CSO facility, \$6,000.00.

(f) For an individual permit for a wastewater stabilization lagoon, \$1,525.00.

(g) For an individual or general permit for an agricultural purpose, \$600.00, unless either of the following applies:

(i) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee would be \$150.00.

(ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee would be \$8,700.00.

(h) For a facility that holds a permit issued under this part but has no discharge and the facility is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of \$100.00. However, if a facility does have a discharge or at some point is no longer connected to a municipal wastewater treatment system, the annual permit fee shall be the appropriate fee as otherwise provided in this subsection.

(6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.

(7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. The fee shall be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual permit fee. If the department does not meet the December 1 deadline for sending invoices, the annual permit fee is due not later than 45 days after receiving an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.

(8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity

of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.

(11) Within 30 days after the effective date of the amendatory act that added this section, the director of the department shall notify each person holding a permit under this part authorizing a discharge into surface water, other than a storm water permit, of the requirements of this section.

(12) As used in this section:

(a) “Agricultural purpose” means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

(b) “Combined sewer overflow” means a discharge from a combined sewer system that occurs when the flow capacity of the combined sewer system is exceeded at a point prior to the headworks of a publicly owned treatment works during wet weather conditions.

(c) “Combined sewer system” means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

(d) “CSO facility” means a facility whose discharge is solely a combined sewer overflow.

(e) “EPA major facility” means a facility that is designated by the United States environmental protection agency as being a major facility under 40 C.F.R. 122.2.

(f) “EPA minor facility” means a facility that is not an EPA major facility.

(g) “Farmers’ cooperative corporation” means a farmers’ cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(h) “General permit” means a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility is acknowledged through a certificate of coverage issued to the facility.

(i) “High-flow facility” means a facility that discharges 1 MGD or more.

(j) “Individual permit” means a permit developed for a particular facility, taking into account that facility’s specific characteristics.

(k) “Industrial or commercial facility” means a facility that is not a municipal facility.

(l) “Low-flow facility” means a facility that discharges less than 1 MGD.

(m) “MGD” means 1,000,000 gallons per day.

(n) “Municipal facility” means a facility that is designed to collect or treat sanitary wastewater, and is either publicly or privately owned, and serves a residential area or a group of municipalities.

(o) “Wastewater stabilization lagoon” means a type of treatment system constructed of ponds or basins designed to receive, hold, and treat sanitary wastewater for a predetermined amount of time. Wastewater is treated through a combination of physical, biological, and chemical processes.

324.3121 National pollutant discharge elimination system fund.

Sec. 3121. (1) The national pollutant discharge elimination system fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(4) The department shall expend money from the fund, upon appropriation, only to administer the national pollutant discharge elimination system program under this part including, but not limited to, all of the following:

(a) Water quality standards development and maintenance.

(b) Permit development and issuance.

(c) Maintenance of program data.

(d) Ambient water quality monitoring conducted to determine permit conditions and evaluate the effectiveness of permit requirements.

(e) Activities conducted to determine a discharger’s permit compliance status, including, but not limited to, inspections, discharge monitoring, and review of submittals.

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

(5) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department’s national pollutant discharge elimination system program that were funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of permit applications received by the department in the preceding year, including applications for new and increased uses and reissuances.

- (c) The number of staff hours dedicated to each of the fee categories listed in section 3120.
 - (d) The number of permits issued for fee categories listed in section 3120.
 - (e) The number of permit applications denied.
 - (f) The number of permit applications withdrawn by the applicant.
 - (g) The percentage and number of permit applications that were reviewed for administrative completeness within statutory time frames.
 - (h) The percentage and number of permit applications submitted to the department that were administratively complete as received.
 - (i) The percentage and number of permit applications for which a final action was taken by the department within statutory time frames for new and increased uses and reissuances.
 - (j) The number of permits reopened by the department.
 - (k) The number of unfilled positions dedicated to the national pollutant discharge elimination system program.
 - (l) The amount of revenue in the fund at the end of the fiscal year.
- (6) As used in this section:
- (a) “Fund” means the national pollutant discharge elimination system fund created in subsection (1).
 - (b) “National pollutant discharge elimination system program” means the national pollutant discharge elimination system program delegated to the department under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, and implemented under this part.

This act is ordered to take immediate effect.

Approved April 22, 2004.

Filed with Secretary of State April 22, 2004.

[No. 92]

(SB 432)

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending sections 73, 283, 393, 499, 509m, 509n, 509t, 509aa, 662, 727, 735, 795, 798c, 799a, 803, and 842 (MCL 168.73, 168.283, 168.393, 168.499, 168.509m, 168.509n, 168.509t, 168.509aa, 168.662, 168.727, 168.735, 168.795, 168.798c, 168.799a, 168.803, and 168.842), sections 73, 283, and 393 as amended by 1999 PA 216, section 499 as amended by 1995 PA 213, sections 509m and 509aa as added by 1994 PA 441, section 509n as amended by 2003 PA 302, section 509t as amended by 1998 PA 21, section 662

as amended by 2004 PA 13, section 727 as amended by 1995 PA 261, section 795 as amended by 2002 PA 91, section 798c as amended by 1990 PA 109, and sections 799a and 803 as amended by 1997 PA 137, and by adding sections 18, 523a, 813, and 829; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

168.18 Definitions.

Sec. 18. As used in this act:

(a) “Help America vote act of 2002” means the help America vote act of 2002, 42 USC 15301 to 15545.

(b) “National voter registration act of 1993” means the national voter registration act of 1993, 42 USC 1973gg to 1973gg-10.

(c) “Uniformed and overseas citizens absentee voting act” means the uniformed and overseas citizens absentee voting act, 42 USC 1973ff to 1973ff-6.

(d) “Voting accessibility for the elderly and handicapped act” means the voting accessibility for the elderly and handicapped act, 42 USC 1973ee to 1973ee-6.

(e) “Voting rights act of 1965” means the voting rights act of 1965, 42 USC 1973 to 1973aa-6.

168.73 Offices of lieutenant governor, secretary of state, and attorney general; nominees; list.

Sec. 73. Not more than 24 hours after the conclusion of the fall state convention, the state central committee of each political party shall canvass the proceedings of the convention and determine the nominees of the convention for the offices of lieutenant governor, secretary of state, and attorney general. Not more than 1 business day after the conclusion of the convention, the chairperson and secretary of the state central committee shall forward to the secretary of state a typewritten or printed list of the names and residence, including the street address if known, of candidates nominated at the state convention. The secretary of state shall forward a copy of a list received under this section to the board of election commissioners of each county, in care of the county clerk at the county seat.

168.283 Candidates for state board of education and boards of state universities; canvass by state central committee of each political party; vignette.

Sec. 283. Not more than 24 hours after the conclusion of the fall state convention, the state central committee of each political party shall canvass the proceedings of the convention and determine the nominees of the convention for membership on the state board of education, the board of regents of the university of Michigan, the board of trustees of Michigan state university, and the board of governors of Wayne state university. Not more than 1 business day after the conclusion of the state convention, the chairperson and secretary of the state central committee shall forward by registered or certified mail to the secretary of state a copy of the vignette adopted by the state central committee and a typewritten or printed list of the names and residence, including the street address if known, of the candidates nominated at the convention for the offices specified in this section. The secretary of state shall forward a copy of a list received under this section to the board of election commissioners of each county, in care of the county clerk at the county seat.

168.393 Candidates for justice of supreme court; canvass by state central committee of each political party.

Sec. 393. Not more than 24 hours after the conclusion of the fall state convention, the state central committee of each political party shall convene and canvass the proceedings of the convention and determine the nominee or nominees of the convention for the office or offices of justice of the supreme court. Not more than 1 business day after the conclusion of the state convention, the chairperson and secretary of the state central committee shall forward by registered or certified mail to the secretary of state a typewritten or printed list of the names and residence, including the street address if known, of the candidate or candidates nominated at the convention for the office or offices of justice of the supreme court. The secretary of state shall forward a copy of a list received under this section to the board of election commissioners of each county, in care of the county clerk at the county seat. The name of each nominee on the list shall be printed upon a nonpartisan judicial ballot containing no party designation together with the names of incumbent justices filing an affidavit under section 392a.

168.499 Registration of elector; registration application; oaths; interpreter; false material statement as misdemeanor; accepting fee as misdemeanor; voter identification card; effect of voter identification card returned to post office.

Sec. 499. (1) An elector entitled to registration in an election precinct may become registered in the precinct by applying in person and signing the registration application before the clerk or assistant clerk of the township, city, or village in which the precinct is located. For the performance of his or her duties under this act, each clerk and assistant clerk has the power to administer oaths and to swear persons as to the truth of statements contained in an application. For a better examination of the applicant, a clerk may employ and swear an interpreter to interpret all questions put to applicants and the answers to those questions. If the applicant, in answer to a question or in the registration application, makes a material statement that is false, the applicant is guilty of a misdemeanor.

(2) A clerk or assistant clerk shall not accept a fee from an elector applying for registration, either for the registering of the elector or for the taking of the acknowledgment on the application. A person who violates this subsection is guilty of a misdemeanor.

(3) The clerk, immediately after receiving the registration or change of address of an elector, shall prepare a voter identification card for the elector. The clerk shall also prepare and send a corrected voter identification card to an elector affected by a change in United States representative, state senatorial, state representative, or county commissioner district or precinct. The clerk shall forward by first-class mail the voter identification card to the elector at the elector's registration address. The voter identification card shall contain the name and address of the registrant and the United States representative, state senatorial, state representative, or county commissioner district and precinct in which the registrant is an elector. If the original voter identification card is returned to the clerk by the post office as nondeliverable, the clerk shall reject the registration and send the individual a notice of rejection. If a duplicate voter identification card is returned to the clerk by the post office, the clerk shall accept this as information that the elector has moved and the clerk shall proceed in conformity with section 509aa.

168.509m Purpose of MCL 168.509m to 168.509gg; definitions.

Sec. 509m. (1) The purposes of this section and sections 509n to 509gg are all of the following:

(a) To establish a statewide qualified voter file that consists of all qualified electors who wish to be registered to vote in local, state, and federal elections.

(b) To enhance the uniformity of the administration of elections by creating and maintaining a statewide file of qualified voters.

(c) To increase the efficiency and decrease the public cost of maintaining voter registration files and implementing the national voter registration act of 1993.

(d) To increase the integrity of the voting process by creating a single qualified voter file that will permit the name of each citizen of this state to appear only once and that is compiled from other state files that require citizens to verify their identity and residence.

(e) To apply technology and information gathered by principal executive departments, state agencies, and county, city, township, and village clerks in a manner that ensures that accurate and current records of qualified voters are maintained.

(2) As used in sections 509n to 509gg:

(a) “Designated voter registration agency” means an office designated under section 509u to perform voter registration activities in this state.

(b) “Qualified voter file” means the statewide qualified voter file established according to section 509o.

168.509n Secretary of state; duties.

Sec. 509n. The secretary of state is responsible for the coordination of the requirements imposed under this chapter, the national voter registration act of 1993, and the help America vote act of 2002. The secretary of state shall do all of the following:

(a) Develop a mail registration form and make the form available for distribution through governmental and private entities, with special emphasis on making the form available to voter registration programs established for the purpose of registering citizens of this state to vote.

(b) Instruct designated voter registration agencies and county, city, township, and village clerks about the voter registration procedures and requirements imposed by law.

(c) By June 15 of each odd numbered year, submit to each member of the committees of the senate and house of representatives with primary responsibility for election matters a report on the qualified voter file. The report shall include, but need not be limited to, both of the following:

(i) Information on the efficiency and effectiveness of the qualified voter file as a voter registration system.

(ii) Recommendations of the secretary of state for amendments to this act to increase the efficiency and effectiveness of the qualified voter file as a voter registration system.

168.509t Person considered registered voter; persons required to vote in person; exceptions; prosecution not precluded in state.

Sec. 509t. (1) Notwithstanding another provision of law to the contrary, a person who is a qualified elector in this state and who registers to vote in a manner consistent with the national voter registration act of 1993 is considered a registered voter under this act.

(2) A person who registers to vote in a jurisdiction in this state by mail shall vote in person and shall provide identification as required under section 303(b) of the help America vote act of 2002, 42 USC 15483, if that person has not previously voted in person in this state. This subsection does not apply to any of the following registered voters:

(a) A person entitled to vote by absentee ballot under the uniformed and overseas citizens absentee voting act.

(b) A person who has a disability as defined in section 103 of the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1103, or, for purposes of voting in person only, a person who is 60 years of age or older.

(c) A person who is entitled to vote other than in person under any other federal law.

(3) This section does not preclude this state from prosecuting a violation of this act that is also a violation of a federal election or voting rights law.

168.509aa Updating registration upon receipt of certain information; duties of clerk; instruction by clerk to challenge voter; cancellation of registration.

Sec. 509aa. (1) A clerk may use change of address information supplied by the United States postal service or other reliable information received by the clerk that identifies registered voters whose addresses may have changed as provided in this section.

(2) Upon receipt of reliable information that a registered voter has moved his or her residence within the city or township, the clerk shall send by forwardable mail all of the following to the voter:

(a) A notice that the clerk has received information indicating that the voter has moved his or her residence within the city or township.

(b) A postage prepaid and preaddressed return card on which the voter may verify or correct the address information.

(c) A notice explaining that, if the address information is correct and the voter has moved his or her residence within the city or township, the voter should complete and return the card to the clerk with a postmark of 30 days or more before the date of the next election. If the voter has moved his or her residence within the city or township and does not complete and return the card to the clerk with a postmark of 30 days or more before the date of the next election, the voter will be required to vote in his or her former precinct of residence in the city or township. The voter will also be required to submit an address correction before being permitted to vote.

(3) Upon the receipt of reliable information that a registered voter has moved his or her residence to another city or township, the clerk shall send by forwardable mail all of the following to the voter:

(a) A notice that the clerk has received information indicating that the voter has moved his or her residence to another city or township.

(b) A postage prepaid and preaddressed return card on which the voter may verify or correct the address information.

(c) A notice containing all of the following information:

(i) If the address information is incorrect and the voter has not moved to another city or township and wishes to remain registered to vote, the voter should complete and return the card to the clerk with a postmark of 30 days or more before the date of the next election. If the card is not completed and returned with a postmark of 30 days or more before the date of the next election, the voter may be required to affirm his or her current

address before being permitted to vote. Further, if the voter does not vote in an election within the period beginning on the date of the notice and ending on the first business day immediately following the second November general election that is held after the date on the notice, the registration of the voter will be canceled and his or her name will be removed from the registration record of that city or township.

(ii) If the voter has moved his or her residence to another city or township, information on how the voter can become registered to vote at the next election in his or her new city or township.

(4) If a notice sent under this section is returned to the clerk by the post office as undeliverable, the clerk shall identify the registration record of a voter as challenged as provided in this act. The clerk shall instruct the board of election inspectors to challenge that voter at the first election at which the voter appears to vote. If in response to the challenge the voter indicates that he or she resides at the registration address or has changed addresses within the city or township, the voter shall be permitted to vote a regular ballot rather than a challenged ballot. The voter shall complete a change of address form at the polling place, if applicable. If the person does not appear to vote in an election within the period beginning on the date of the notice and ending on the first business day immediately following the second November general election that is held after the date of the notice, the clerk shall cancel the registration of the voter and remove his or her name from the registration record of the city or township.

168.523a Individual not listed on voter registration list; issuance of ballot; procedure.

Sec. 523a. (1) If an individual who has applied to register to vote on or before the close of registration appears at a polling place on election day and completes an application under section 523 is not listed on the voter registration list, the election inspector shall issue a ballot to the individual as follows:

(a) For an individual who presents a receipt issued by a department of state office, a designated voter registration agency, or the elector's county, city, or township clerk's office verifying the acceptance of a voter registration application before the close of registration and completes a new voter registration application, the election inspector shall allow the individual to vote a ballot in the same manner as an elector whose name is listed on the voter registration list.

(b) For an individual who does not present a receipt verifying the acceptance of a voter registration application under subdivision (a), the election inspector shall determine whether the individual is in the appropriate polling place based on residence information provided by the individual. The election inspector shall review any documents or maps in the polling place or communicate with the city or township clerk to verify the appropriate polling place for the individual. The election inspector shall direct an individual who is not in the appropriate polling place to the appropriate polling place. If the individual refuses to go to the appropriate polling place, the election inspector shall issue the individual a provisional ballot that shall be processed according to subsection (5).

(2) Except for an individual who produces a receipt under subsection (1)(a), the election inspector shall require an individual who is not listed on the voter registration list to execute a sworn statement affirming that the individual submitted a voter registration application before the close of registration and is eligible to vote in the election. An individual who provides false information in a signed sworn statement under this subsection is guilty of perjury. An individual signing a sworn statement shall complete a new

voter registration application. The individual shall state the approximate date and in what manner the registration application was submitted:

- (a) To a department of state office.
- (b) To a designated voter registration agency.
- (c) To the office of his or her county, city, or township clerk.
- (d) By a mailed application.

(3) The election inspector shall contact the city or township clerk to verify whether the individual who signed the sworn statement is listed in the registration records of the jurisdiction or whether there is any information contrary to the content of the sworn statement.

(4) If the city or township clerk verifies the elector information and finds no information contrary to the information provided by the individual in the sworn statement and the individual presents a Michigan operator's or chauffeur's license, department of state issued personal identification card, other government issued photo identification card, or a photo identification card issued by an institution of higher education in this state described in section 6 of article VIII of the state constitution of 1963 or a junior college or community college established under section 7 of article VIII of the state constitution of 1963 that contains a current residence address to establish his or her identity and residence address, the individual shall be permitted to vote a provisional ballot on election day. Before the provisional ballot is tabulated on election day, election inspectors shall process the ballot as a challenged ballot under sections 745 and 746.

(5) If the election inspector is not able to contact the city or township clerk, the individual is not in the correct precinct, the individual presents identification other than a Michigan operator's or chauffeur's license, department of state issued personal identification card, other government issued photo identification card, or a photo identification card issued by an institution of higher education in this state described in section 6 of article VIII of the state constitution of 1963 or a junior college or community college established under section 7 of article VIII of the state constitution of 1963 that contains a current residence address, or the individual is unable to present any identification, the individual shall be issued a provisional ballot that is not tabulated on election day but is secured for verification after the election. A provisional ballot shall also be issued under this subsection to a voter who presents a Michigan operator's license, chauffeur's license, department of state personal identification card, other government issued photo identification card, or a photo identification card issued by an institution of higher education in this state described in section 6 of article VIII of the state constitution of 1963 or a junior college or community college established under section 7 of article VIII of the state constitution of 1963 that does not bear the voter's current residence address, if the voter also presents a document to establish the voter's current residence address. The election inspector shall accept a document containing the name and current residence address of the voter as sufficient documentation to issue a provisional ballot if it is 1 of the following documents:

- (a) A current utility bill.
- (b) A current bank statement.
- (c) A current paycheck, government check, or other government document.

(6) A provisional ballot shall be placed in a provisional ballot return envelope prescribed by the secretary of state and delivered to the city or township clerk after the polls close in a manner as prescribed by the secretary of state.

(7) For a provisional ballot voted under subsection (4), the election inspector shall provide the voter with a notice that his or her ballot has been tabulated. For a provisional ballot voted under subsection (5), the election inspector shall provide the voter with a notice that the voter's information will be verified by the clerk of the jurisdiction within 6 days after the election to determine whether the ballot will be tabulated and, if the ballot is not tabulated, to determine the reason it was not tabulated. A clerk of a jurisdiction shall provide a free access system for the voter to determine whether the ballot was tabulated. The free access system may include a telephone number that does not require a toll charge, a toll-free telephone number, an internet website, or a mailed notice.

(8) As used in this section and sections 813 and 829, "provisional ballot" means a special ballot utilized for an individual who is not listed on the voter registration list at the polling place that is tabulated only after verification of the individual's eligibility to vote.

168.662 Designating place of holding election in city, village, or township; polling places; use of publicly owned or controlled buildings; rental or erection of buildings; facilities; central polling places; abolishment; compliance with voting accessibility.

Sec. 662. (1) The legislative body in each city, village, and township shall designate and prescribe the place or places of holding an election for a city, village, or township election, and shall provide a suitable polling place in or for each precinct located in the city, village, or township for use at each election. Except as otherwise provided in this section, school buildings, fire stations, police stations, and other publicly owned or controlled buildings shall be used as polling places. If it is not possible or convenient to use a publicly owned or controlled building as a polling place, the legislative body of the city, township, or village may use as a polling place a building owned or controlled by an organization that is exempt from federal income tax as provided by section 501(c) other than 501(c)(4), (5), or (6) of the internal revenue code of 1986, or any successor statute. The legislative body of a city, township, or village shall not designate as a polling place a building that is owned by a person who is a sponsor of a political committee or independent committee. A city, township, or village shall not use as a polling place a building that does not meet the requirements of this section. As used in this subsection, "sponsor of a political committee or independent committee" means a person who is described as being a sponsor under section 24(3) of the Michigan campaign finance act, 1976 PA 388, MCL 169.224, and includes a subsidiary of a corporation or a local of a labor organization, if the corporation or labor organization is considered a sponsor under section 24(3) of the Michigan campaign finance act, 1976 PA 388, MCL 169.224.

(2) The legislative body in each city, village, and township shall make arrangements for the rental or erection of suitable buildings for use as polling places if publicly owned or controlled buildings are not available, and shall have the polling places equipped with the necessary facilities for lighting and with adequate facilities for heat and ventilation. The legislative body may establish a central polling place or places for 6 precincts or less if it is possible and convenient for the electors to vote at the central polling place. The legislative body may abolish other polling places not required as a result of the establishment of a central polling place.

(3) The legislative body of a city, village, or township may establish a polling place at a for profit or nonprofit residence or facility in which 150 persons or more aged 62 or older reside or at an apartment building or complex in which 150 persons or more reside. A township board may provide polling places located within the limits of a city that has been incorporated from territory formerly a part of the township, and the electors of the township may cast their ballots at those polling places. If 2 contiguous townships utilize a

combined township hall or other publicly owned or controlled building within 1 of the township's boundaries and outside of the other township's boundaries, and there is not another publicly owned or controlled building or a building owned or controlled by an organization that is exempt from federal income tax, as provided by section 501(c), other than 501(c)(4), (5), or (6), of the internal revenue code of 1986, available or suitable for a polling place within the other township, then each township board may provide a polling place in that publicly owned building for 1 or more election precinct.

(4) The legislative body of a city, village, or township shall not establish, move, or abolish a polling place less than 60 days before an election unless necessary because a polling place has been damaged, destroyed, or rendered inaccessible or unusable as a polling place.

(5) The legislative body of a city, village, or township shall ensure that a polling place established under this section is accessible and complies with the voting accessibility for the elderly and handicapped act and the help America vote act of 2002.

(6) As used in this section, "accessible" means the removal or modification of policies, practices, and procedures that deny an individual with a disability the opportunity to vote, including the removal of physical barriers as identified in section 261(b) of the help America vote act of 2002, 42 USC 15421, so as to ensure individuals with disabilities the opportunity to participate in elections in this state.

168.727 Challenge; duty of election inspector; indiscriminate challenge; penalty.

Sec. 727. (1) An election inspector shall challenge an applicant applying for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant's name in the registration book. A registered elector of the precinct present in the polling place may challenge the right of anyone attempting to vote if the elector knows or has good reason to suspect that individual is not a registered elector in that precinct. An election inspector or other qualified challenger may challenge the right of an individual attempting to vote who has previously applied for an absent voter ballot and who on election day is claiming to have never received the absent voter ballot or to have lost or destroyed the absent voter ballot.

(2) Upon a challenge being made under subsection (1), an election inspector shall immediately do all of the following:

(a) Identify as provided in sections 745 and 746 a ballot voted by the challenged individual, if any.

(b) Make a written report including all of the following information:

(i) All election disparities or infractions complained of or believed to have occurred.

(ii) The name of the individual making the challenge.

(iii) The time of the challenge.

(iv) The name, telephone number, and address of the challenged individual.

(v) Other information considered appropriate by the election inspector.

(c) Retain the written report created under subdivision (b) and make it a part of the election record.

(d) Inform a challenged elector of his or her rights under section 729.

(3) A challenger shall not make a challenge indiscriminately and without good cause. A challenger shall not handle the poll books while observing election procedures or the

ballots during the counting of the ballots. A challenger shall not interfere with or unduly delay the work of the election inspectors. An individual who challenges a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters is guilty of a misdemeanor.

168.735 Poll book and poll list; contents.

Sec. 735. (1) At each primary and election, election inspectors shall keep 1 poll book and 1 poll list. An election inspector shall enter in the poll book, in the order in which electors are given ballots, the name of each elector who is given a ballot and immediately after the name, on the same line, shall enter the number of the ballot given to the elector. For an absent voter ballot, when an election inspector removes the ballot from the sealed absent voter envelope, the election inspector shall enter in the poll book the name of the absent voter and the number of the ballot.

(2) If an elector is issued a provisional ballot, an election inspector shall enter a proper designation in the poll book, including whether the provisional ballot was tabulated in the precinct or was secured for verification after the election.

(3) At the completion of the precinct canvass, an election inspector shall record on the certificate provided in the poll book the number of each metal seal used to seal voting equipment and ballot containers. Each member of the board of election inspectors shall sign the certificate.

168.795 Electronic voting system; requirements; method for rendering electronic tabulating equipment inoperable; equipping each polling place with accessible voting device.

Sec. 795. (1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements:

(a) Provide for voting in secrecy, except in the case of voters who receive assistance as provided by this act.

(b) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject all choices recorded on the elector's ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question. Electronic tabulating equipment that can detect that the choices recorded on an elector's ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question shall be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector shall be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot.

(c) Permit an elector, at a presidential election, by a single selection to vote for the candidates of a party for president, vice-president, and presidential electors.

(d) Permit an elector in a primary election to vote for the candidates in the party primary of the elector's choice. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject each ballot on which votes are cast for candidates of more than 1 political party. Electronic tabulating equipment that can detect that the elector has voted for candidates of more than 1 political party shall be located at each polling place and programmed to reject a ballot containing that type of an error. If a

choice on a ballot is rejected as provided in this subdivision, an elector shall be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot.

(e) Prevent an elector from voting for the same person more than once for the same office.

(f) Reject a ballot on which no valid vote is cast. Electronic tabulating equipment shall be programmed to reject a ballot on which no valid vote is cast.

(g) Be suitably designed for the purpose used; be durably constructed; and be designed to provide for safety, accuracy, and efficiency.

(h) Be designed to accommodate the needs of an elderly voter or a person with 1 or more disabilities.

(i) Record correctly and count accurately each vote properly cast.

(j) Provide an audit trail.

(k) Provide an acceptable method for an elector to vote for a person whose name does not appear on the ballot.

(l) Allow for accumulation of vote totals from the precincts in the jurisdiction. The accumulation software must meet specifications prescribed by the secretary of state and must be certified by the secretary of state as meeting these specifications.

(m) Be compatible with or include at least 1 voting device that is accessible for an individual with disabilities to vote in a manner that provides the same opportunity for access and participation, including secrecy and independence, as provided for other voters. The voting device shall include nonvisual accessibility for the blind and visually impaired.

(2) Electronic tabulating equipment that counts votes at the precinct before the close of the polls shall provide a method for rendering the equipment inoperable if vote totals are revealed before the close of the polls. Electronic tabulating equipment that tabulates ballots, including absentee ballots, at a central location shall be programmed to reject a ballot if the choices recorded on an elector's ballot for an office or a question exceed the number that the elector is entitled to vote for on that office or question, if no valid choices are recorded on an elector's ballot, or if, in a primary election, votes are recorded for candidates of more than 1 political party.

(3) Beginning January 1, 2006, each jurisdiction in this state conducting an election shall equip each polling place with at least 1 accessible voting device as required under subsection (1)(m).

168.798c Casting absentee votes on paper ballots or ballot cards; count; recording; voting and processing absent voters' ballots; inspection of rejected ballot.

Sec. 798c. (1) Absentee votes may be cast on paper ballots or ballot cards or both. Absent voter ballots may be counted in the various voting precincts or may be counted by absent voter counting boards. Absentee votes cast on paper ballots may be recorded by election inspectors on ballot cards for counting by tabulating equipment.

(2) In an election held under this act, absent voters' ballots may be voted and processed in the manner provided by this chapter.

(3) If electronic tabulating equipment rejects an absent voter ballot due to programming required under section 795, the rejected ballot shall be inspected to confirm the presence of the error before the ballot is processed. A vote for each elective office or ballot question in which an error is confirmed shall not be counted.

168.799a Recounting punched, marked, or stamped ballot; procedure; stray marks; releasing sealed materials.

Sec. 799a. (1) This section governs the recounting of a ballot on which a voter has made a selection by means of a punch, mark, or stamp.

(2) If the electronic voting system requires that the elector cast a vote by punching out a hole in a ballot, the vote shall not be considered valid unless the portion of the ballot designated as a voting position is completely removed or is hanging by 1 or 2 corners or the equivalent.

(3) If the electronic voting system requires that the elector place a mark in a predefined area on the ballot in order to cast a vote, the vote shall not be considered valid unless there is a mark within the predefined area. A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark subject to recount with other marks appearing on the ballot. The secretary of state shall issue instructions, subject to the approval of the board of state canvassers, relevant to stray marks to ensure the fairness and uniformity of determinations made under this subsection. A secretary of state's instruction relevant to stray marks shall not be applied to a ballot unless the secretary of state issued the instruction not less than 63 days before the date of the election.

(4) Unless a petition for recount has been filed and the recount has not been completed, ballots, ballot labels, programs, test results, and other sealed materials may be released from their original seal after 7 days following the final determination of the board of canvassers with respect to the election at which the ballots were voted. However, the released materials shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.

168.803 Counting and recounting of votes; intent of voter; stray marks; instructions issued by secretary of state.

Sec. 803. (1) Except as otherwise provided in this act, the following rules govern the counting and recounting of votes:

(a) If it is clearly evident from an examination of a ballot that the ballot has been mutilated for the purpose of distinguishing it or that there has been placed on the ballot some mark, printing, or writing for the purpose of distinguishing it, then that ballot is void and shall not be counted.

(b) A cross, the intersection of which is within or on the line of the proper circle or square, or a check mark, the angle of which is within a circle or square, is valid. Crosses or check marks otherwise located on the ballot are void.

(c) Marks other than crosses or check marks used to designate the intention of the voter shall not be counted.

(d) A cross is valid even though 1 or both lines of the cross are duplicated, if the lines intersect within or on the line of the square or circle.

(e) Two lines meeting within or on the line of the square or circle, although not crossing each other, are valid if it is apparent that the voter intended to make a cross.

(f) A failure to properly mark a ballot as to 1 or more candidates does not alone invalidate the entire ballot if the ballot has been properly marked as to other candidates, unless the improper marking is determined to be a distinguishing mark as described in this subsection.

(g) Erasures and corrections on a ballot made by the elector in a manner frequently used for this purpose shall not be considered distinguishing marks or mutilations.

(h) Any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidate is void as to the candidate or candidates affected by that determination.

(i) Any votes cast for a deceased candidate are void and shall not be counted, except that votes cast for a candidate for governor who has died, and for whom a replacement has not been made, shall be counted for the candidate for lieutenant governor of that party.

(j) All ballots cast that are not counted shall be marked by the inspector "not counted", kept separate from the others by being tied or held in 1 package, and placed in the ballot box with the counted ballots.

(k) A vote shall not be counted for any candidate unless a cross or a check mark has been placed by the voter in the circle at the head of the party ticket, if any, on which the name of the candidate has been printed, written, or placed or unless a cross or a check mark has been placed by the voter in the square before the space in which the name of the candidate has been printed, written, or placed.

(2) If an electronic voting system requires that the elector place a mark in a predefined area on the ballot in order to cast a vote, the vote shall not be considered valid unless there is a mark within the predefined area. A stray mark made within a predefined area is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official shall compare the mark with other marks appearing on the ballot. The secretary of state shall issue instructions, subject to the approval of the board of state canvassers, relevant to stray marks to ensure the fairness and uniformity of determinations made under this subsection. A secretary of state's instruction relevant to stray marks shall not be applied to a ballot unless the secretary of state issued the instruction not less than 63 days before the date of the election.

168.813 Provisional ballot; tabulation; report.

Sec. 813. (1) Within 6 days after the election, for each provisional ballot that was placed in a provisional ballot return envelope, the city or township clerk shall determine whether the individual voting the provisional ballot was eligible to vote a ballot and whether to tabulate the provisional ballot. In making this determination, the city or township clerk shall not open the provisional ballot return envelope. A provisional ballot shall only be tabulated if a valid voter registration record for the elector is located or if the identity and residence of the elector is established using a Michigan operator's license, chauffeur's license, personal identification card, other government issued photo identification card, or a photo identification card issued by an institution of higher education in this state described in section 6 of article VIII of the state constitution of 1963 or a junior college or community college established under section 7 of article VIII of the state constitution of 1963 along with a document to establish the voter's current residence address as provided in section 523a(5). Before the provisional ballot is tabulated, election officials shall process the ballot as a challenged ballot under sections 745 and 746.

(2) Within 7 days after the election, but sooner if practicable, the city or township clerk shall transmit the results of provisional ballots tabulated after the election to the board of county canvassers. The results shall be transmitted in a form prescribed by the secretary of state.

(3) Within 7 days after the election, the city or township clerk shall transmit to the county clerk a provisional ballot report for each precinct in the jurisdiction. The report shall include for each precinct the number of provisional ballots issued, the number of provisional ballots tabulated on election day, the number of provisional ballots forwarded to the clerk to be determined after the election, the number of provisional ballots tabulated

by the clerk after election day, and any additional information concerning provisional ballots as required by the secretary of state.

168.829 County provisional ballot report.

Sec. 829. (1) The board of county canvassers shall include the results of the tabulated provisional ballots in the canvass of the election following procedures prescribed by the secretary of state designed to maintain the secrecy of the ballot.

(2) Within 14 days after a primary or election, the county clerk shall transmit a county provisional ballot report to the secretary of state. The county provisional ballot report shall be in a manner prescribed by the secretary of state. After the secretary of state receives a county provisional ballot report, the county provisional ballot report shall be immediately available for public inspection.

168.842 Board of state canvassers; meeting; time and place, notice, adjournment; expedited canvass of returns.

Sec. 842. (1) The board of state canvassers, for the purpose of canvassing the returns and ascertaining and determining the result of an election, shall meet at the office of the secretary of state on or before the twentieth day after the election. The secretary of state shall appoint the day of the meeting and shall notify the other members of the board. The board has power to adjourn from time to time to await the receipt or correction of returns, or for other necessary purposes, but shall complete the canvass and announce their determination not later than the fortieth day after the election. The board may at the time of its meeting, or an adjournment of its meeting, canvass the returns for any office for which the complete returns have been received.

(2) If the unofficial election returns show that the election of electors of president and vice president is determined by a vote differential between the first place and second place candidates for president and vice president of the United States of less than 25,000 votes, the secretary of state may direct the boards of county canvassers to canvass returns for electors of president and vice president on an expedited schedule. The secretary of state may direct the boards of county canvassers to complete the statements for electors of president and vice president required by section 824 and certify the statements as required by section 828 to the secretary of state by the seventh day after the election or by a date before the fourteenth day after the election.

(3) The secretary of state may appoint the day for the board of state canvassers to conduct the expedited canvass of the returns for electors of president and vice president and determine the results of that election. The day appointed for the expedited canvass shall be as soon as practicable after receipt of the returns from the boards of county canvassers, but no later than the twentieth day after the election.

Repeal of MCL 168.509, 168.509a, and 168.509y.

Enacting section 1. Sections 509, 509a, and 509y of the Michigan election law, 1954 PA 116, MCL 168.509, 168.509a, and 168.509y, are repealed.

This act is ordered to take immediate effect.

Approved April 26, 2004.

Filed with Secretary of State April 26, 2004.

[No. 93]**(HB 5466)**

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending section 5103 (MCL 700.5103), as amended by 2000 PA 54.

The People of the State of Michigan enact:

700.5103 Delegation of powers by parent or guardian.

Sec. 5103. (1) By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent’s or guardian’s powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption.

(2) If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the thirty-first day after the end of the deployment.

(3) If a guardian for a minor or legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

This act is ordered to take immediate effect.

Approved May 7, 2004.

Filed with Secretary of State May 7, 2004.

[No. 94]**(SB 109)**

AN ACT to amend 1975 PA 164, entitled “An act to create a commission on Spanish-speaking affairs, an office of Spanish-speaking affairs, and an interagency council on Spanish-speaking affairs; to prescribe their powers and duties; to provide for appropriations; and to abolish the advisory council for the Spanish-speaking,” by amending sections 2 and 4 (MCL 18.302 and 18.304).

The People of the State of Michigan enact:

18.302 Commission on Spanish-speaking affairs; establishment; appointment, qualifications, and terms of members; election of officers; vacancy; meetings; compensation; quorum.

Sec. 2. (1) A commission on Spanish-speaking affairs is established within the department of labor and economic growth. The commission shall consist of 15 members appointed

by the governor by and with the advice and consent of the senate. The commission shall elect a chairperson, vice-chairperson, and other officers from its members as it deems advisable.

(2) Members of the commission shall be Spanish-speaking and of Spanish-speaking origin. Members shall be appointed from urban, suburban, and rural geographical areas representative of the Spanish-speaking people throughout this state.

(3) The term of each member shall be 3 years. Of the members first appointed, 5 shall serve for 3-year terms, 5 shall serve for 2-year terms, and 5 shall serve for a 1-year term. A vacancy shall be filled by the governor in the same manner as the original appointment for the balance of the unexpired term.

(4) The commission shall meet not less than 12 times during each calendar year. Each member of the commission shall receive per diem compensation as appropriated in the annual budget. Per diem compensation shall be paid only for a full day's commission work at which a quorum is present. A member shall receive reimbursement for actual and necessary traveling expenses incurred in the performance of official business. Reimbursement shall be made in the manner provided by law for state employees.

(5) A majority of the members of the commission constitutes a quorum. A majority of the members of the commission is required for final action by the commission. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission.

18.304 Office of Spanish-speaking affairs; establishment; selection of director.

Sec. 4. (1) The office of Spanish-speaking affairs is established within the department of labor and economic growth.

(2) The commission shall select the director of the office with the concurrence of the director of the department of labor and economic growth in accordance with state civil service procedures.

This act is ordered to take immediate effect.

Approved May 7, 2004.

Filed with Secretary of State May 7, 2004.

[No. 95]

(SB 759)

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 80140 (MCL 324.80140), as added by 1995 PA 58.

The People of the State of Michigan enact:

324.80140 Educational programs; establishment; youthful boat operators training program; certificates of completion; information to be included in program.

Sec. 80140. (1) In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the state, the department shall establish and pursue comprehensive educational programs designed to advance boating and general water safety.

(2) The department shall put into effect a program to train youthful boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the department may designate as its agent any person it considers qualified to act in this capacity. A charge shall not be made for any instruction given or for the award of boating safety certificates.

(3) The department shall include in its educational programs under this section all of the following:

- (a) Information on proper marine fueling techniques.
- (b) Information on the problems that marine fuel spillage may cause to water bodies.
- (c) Information on how and where to report a marine fuel spill.

This act is ordered to take immediate effect.

Approved May 7, 2004.

Filed with Secretary of State May 7, 2004.

[No. 96]

(SB 350)

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending sections 666 and 668 (MCL 168.666 and 168.668) and by adding section 668a.

The People of the State of Michigan enact:

168.666 Metal seals; paper seals; blank forms for returns.

Sec. 666. At each federal, state, district, or county primary or election, the secretary of state shall furnish to each county clerk at state expense the following items:

(a) Before each primary, general, or special election at which state, district, or county officers are to be nominated or elected, a supply of self-sealing metal seals adapted and suitable for sealing the ballot boxes used at the election. The metal seals shall have the

words “State of Michigan” and serial numbers stamped on them. The secretary of state shall provide a sufficient number of metal seals for each voting precinct within the county at least 30 days before an election.

(b) A substantial supply of red gummed paper seals for use of the precinct boards of election inspectors in sealing the package of ballots and the envelopes containing the tally sheets or poll books and the statement of returns. Each seal shall have inscribed on it the words “Election Seal—State of Michigan” and the date of the primary or election at which it is to be used. A space shall also be provided on the seal in which 2 members of the board of election inspectors shall write their initials after the seal has been applied.

(c) Suitable blank forms for use by the county boards of canvassers in making returns of the canvass required by this act. Each county board of canvassers shall use the forms furnished by the secretary of state in making returns of the canvass.

168.668 Delivery of voter registration list, forms, and other supplies.

Sec. 668. Before the polls open, the city, township, or village clerk shall deliver to the board of election inspectors of each precinct the voter registration list, the forms for poll lists and returns, and any other supplies necessary to conduct the election.

168.668a Voter information displays.

Sec. 668a. (1) The secretary of state shall furnish to each county clerk at state expense for each precinct 2 voter information displays that contain in not less than 18-point type the following information:

- (a) The hours that the polls will be open.
 - (b) Voting instructions.
 - (c) Information on an individual’s right to obtain a provisional ballot and instructions on how to vote a provisional ballot.
 - (d) Information on the identification requirements that apply to voters who register by mail.
 - (e) Instructions on how to contact the appropriate election official about alleged voting rights violations.
 - (f) Information on the federal and state laws that prohibit fraud and misrepresentation.
 - (g) Information on how to challenge another voter as unqualified to vote.
 - (h) Other information that the secretary of state considers necessary.
- (2) Upon receipt of the voter information displays under subsection (1), each county clerk shall provide to each city, township, or village clerk, as designated by the secretary of state, 2 voter information displays for each precinct in the county.
- (3) The city, township, or village clerk shall provide to each precinct 2 voter information displays and an instruction ballot for display at each precinct.
- (4) Before the polls open on election day, the board of election inspectors in each precinct shall post in conspicuous places in the polling place the voter information displays and instruction ballot required under this section.
- (5) If requested by an elector, the city, township, or village clerk shall have available a means to provide the information contained in the voter information displays in an alternative format, as prescribed by the secretary of state.

This act is ordered to take immediate effect.

Approved May 7, 2004.

Filed with Secretary of State May 7, 2004.

[No. 97]**(SB 206)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 16131 and 16263 (MCL 333.16131 and 333.16263), as amended by 2004 PA 3, and by adding section 16323a and part 168.

The People of the State of Michigan enact:

333.16131 Boards and task forces; expiration of terms of members; exception.

Sec. 16131. The terms of office of individual members of the boards and task forces, except those appointed to fill vacancies, expire 4 years after appointment as follows:

Audiologists	June 30
Nursing	June 30
Nursing home administrator	June 30
Optometry	June 30
Pharmacy	June 30
Podiatric medicine and surgery	June 30
Dentistry	June 30
Chiropractic	December 31
Counseling	June 30
Marriage and family therapy	June 30
Medicine	December 31
Occupational therapists	December 31
Osteopathic medicine and surgery	December 31
Physical therapy	December 31

Psychology	December 31
Respiratory care	December 31
Social work	December 31
Veterinary medicine	December 31

333.16263 Restricted use of words, titles, or letters.

Sec. 16263. (1) Except as provided in subsection (2), the following words, titles, or letters or a combination thereof, with or without qualifying words or phrases, are restricted in use only to those persons authorized under this article to use the terms and in a way prescribed in this article:

(a) “Chiropractic”, “doctor of chiropractic”, “chiropractor”, “d.c.”, and “chiropractic physician”.

(b) “Dentist”, “doctor of dental surgery”, “oral and maxillofacial surgeon”, “orthodontist”, “prosthodontist”, “periodontist”, “endodontist”, “oral pathologist”, “pediatric dentist”, “dental hygienist”, “registered dental hygienist”, “dental assistant”, “registered dental assistant”, “r.d.a.”, “d.d.s.”, “d.m.d.”, and “r.d.h.”.

(c) “Doctor of medicine” and “m.d.”.

(d) “Physician’s assistant” and “p.a.”.

(e) “Registered professional nurse”, “registered nurse”, “r.n.”, “licensed practical nurse”, “l.p.n.”, “nurse midwife”, “nurse anesthetist”, “nurse practitioner”, “trained attendant”, and “t.a.”.

(f) “Doctor of optometry”, “optometrist”, and “o.d.”.

(g) “Osteopath”, “osteopathy”, “osteopathic practitioner”, “doctor of osteopathy”, “diplomat in osteopathy”, and “d.o.”.

(h) “Pharmacy”, “pharmacist”, “apothecary”, “drugstore”, “druggist”, “medicine store”, “prescriptions”, and “r.ph.”.

(i) “Physical therapy”, “physical therapist”, “physiotherapist”, “registered physical therapist”, “licensed physical therapist”, “physical therapy technician”, “p.t.”, “r.p.t.”, “l.p.t.”, and “p.t.t.”.

(j) “Chiropodist”, “chiropody”, “chiropodical”, “podiatry”, “podiatrist”, “podiatric”, “doctor of podiatric medicine”, “foot specialist”, “podiatric physician and surgeon”, and “d.p.m.”.

(k) “Consulting psychologist”, “psychologist”, “psychological assistant”, “psychological examiner”, “licensed psychologist”, and “limited licensed psychologist”.

(l) “Licensed professional counselor”, “licensed counselor”, “professional counselor”, and “l.p.c.”.

(m) “Sanitarian”, “registered sanitarian”, and “r.s.”.

(n) Until July 1, 2005, “social worker”, “certified social worker”, “social work technician”, “s.w.”, “c.s.w.”, and “s.w.t.”. Beginning July 1, 2005, “social worker”, “licensed master’s social worker”, “licensed bachelor’s social worker”, “registered social service technician”, “social service technician”, “l.m.s.w.”, “l.b.s.w.”, and “r.s.s.t.”.

(o) “Veterinary”, “veterinarian”, “veterinary doctor”, “veterinary surgeon”, “doctor of veterinary medicine”, “v.m.d.”, “d.v.m.”, “animal technician”, or “animal technologist”.

(p) “Occupational therapist”, “occupational therapist registered”, “certified occupational therapist”, “o.t.”, “o.t.r.”, “c.o.t.”, “certified occupational therapy assistant”, “occupational therapy assistant”, or “c.o.t.a.”.

(q) “Marriage advisor” or “marriage consultant”; “family counselor”, “family advisor”, “family therapist”, or “family consultant”; “family guidance counselor”, “family guidance advisor”, or “family guidance consultant”; “marriage guidance counselor”, “marriage guidance advisor”, or “marriage guidance consultant”; “family relations counselor”; “marriage relations counselor”, “marriage relations advisor”, or “marriage relations consultant”; “marital counselor” or “marital therapist”; “limited licensed marriage and family therapist” or “limited licensed marriage counselor”; “licensed marriage and family therapist” or “licensed marriage counselor”; and “l.m.f.t.”.

(r) “Nursing home administrator”.

(s) “Respiratory therapist”, “respiratory care practitioner”, “licensed respiratory therapist”, “licensed respiratory care practitioner”, “r.t.”, “r.c.p.”, “l.r.t.”, and “l.r.c.p.”.

(t) “Audiometrist”, “audiologist”, “hearing therapist”, “hearing aid audiologist”, “educational audiologist”, “industrial audiologist”, and “clinical audiologist”.

(2) Notwithstanding section 16261, a person who was specially trained at an institution of higher education in this state to assist a physician in the field of orthopedics and upon completion of training, received a 2-year associate of science degree as an orthopedic physician’s assistant before January 1, 1977, may use the title “orthopedic physician’s assistant” whether or not the person is licensed under this article.

333.16323a Fees.

Sec. 16323a. Fees for a person licensed or seeking licensure as an audiologist under part 168 are as follows:

- | | |
|--------------------------------------|-----------|
| (a) Application processing fee | \$ 120.00 |
| (b) License fee, per year | 150.00 |

PART 168. AUDIOLOGY

333.16801 Definitions; scope of practice; limitation.

Sec. 16801. (1) As used in this part:

(a) “Audiologist” means an individual licensed under this article to engage in the practice of audiology.

(b) “Practice of audiology” means the nonmedical and nonsurgical application of principles, methods, and procedures related to disorders of hearing, including all of the following:

(i) Facilitating the conservation of auditory system function.

(ii) Developing and implementing hearing conservation programs.

(iii) Preventing, identifying, and assessing hearing disorders of the peripheral and central auditory system.

(iv) Selecting, fitting, and dispensing of amplification systems, including hearing aids and related devices, and providing training for their use.

(v) Providing auditory training, consulting, education, and speech reading to individuals with hearing disorders.

(vi) Administering and interpreting tests of vestibular function and tinnitus in compliance with section 16809 and in adherence to the mandate of subsection (2).

(vii) Routine cerumen removal from the cartilaginous portion of the external ear in otherwise healthy ears except that if the audiologist, while engaged in routine cerumen

removal, discovers any trauma, including, but not limited to, continuous uncontrolled bleeding, lacerations, or other traumatic injuries, he or she shall, as soon as practically possible, refer the patient to a person licensed in the practice of medicine or osteopathic medicine and surgery.

(viii) Speech and language screening limited to a pass-fail determination for the purpose of identification of individuals with disorders of communication.

(2) Practice of audiology does not include the practice of medicine or osteopathic medicine and surgery or medical diagnosis or treatment.

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

333.16803 License required.

Sec. 16803. Beginning 120 days after the effective date of this part and except as otherwise provided in section 16807, an individual shall not engage in the practice of audiology unless licensed or otherwise authorized by this article.

333.16805 Michigan board of audiology; creation; membership.

Sec. 16805. The Michigan board of audiology is created within the department. The board consists of the following 9 voting members who meet the requirements of part 161:

(a) Five audiologists. The members initially appointed under this subdivision shall meet the requirements of section 16135.

(b) Two members shall be persons licensed to practice medicine or osteopathic medicine and surgery who hold a certificate of qualification from the American board of otolaryngology.

(c) Two public members, neither of whom is an audiologist or physician or has family or financial ties to an audiologist or physician.

333.16807 Limitations; exceptions.

Sec. 16807. This part does not limit any of the following:

(a) An individual employed by a regionally accredited college or university and involved with research or the teaching of communication disorders from performing those duties for which he or she is employed by that institution, as long as the individual does not engage in the practice of audiology or hold himself or herself out as licensed or otherwise authorized under this article as an audiologist.

(b) An individual who is employed by the department of community health in 1 of its approved hearing screening training programs from conducting screening of hearing sensitivity.

(c) An individual certified by an agency acceptable to the occupational health standards commission from engaging in hearing screening as part of a hearing conservation program in compliance with standards adopted under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(d) A certified, licensed, registered, or otherwise statutorily recognized member of another profession, including a person licensed in the practice of medicine or osteopathic medicine and surgery and an unlicensed or licensed person to whom tasks have been delegated under his or her supervision, and including a person licensed under article 13 of the occupational code, 1980 PA 299, MCL 339.1301 to 339.1309, from practicing his or her

profession as authorized by law, so long as the individual does not hold himself or herself out to the public as possessing a license issued or title protected under this article.

333.16809 Administration of tests; compliance with federal guidelines for fitting and dispensing hearing instruments; sale of hearing instrument to person under 18 years of age.

Sec. 16809. (1) An audiologist shall administer tests of vestibular function only to patients who have been referred to him or her by a person licensed to practice medicine or osteopathic medicine and surgery.

(2) If an audiologist administers an audiometric test for tinnitus and his or her examination of the patient reflects the presence of otologic or systemic diseases, the audiologist shall promptly refer the patient to a person licensed to practice medicine or osteopathic medicine and surgery.

(3) An audiologist shall comply with the federal food and drug administration medical referral guidelines for fitting and dispensing hearing instruments, 21 CFR 801.621, incorporated by reference.

(4) A licensed audiologist may not sell a hearing instrument to a person under 18 years of age unless the person or the parent or guardian of the person presents to the audiologist a written statement signed by a licensed physician who specializes in diseases of the ear stating that both of the following exist:

(a) The person's hearing loss has been medically evaluated during the 6-month period preceding the date the statement is presented.

(b) The person may be considered a candidate for a hearing instrument.

333.16811 Requirements for licensure.

Sec. 16811. (1) The department shall require an individual granted a license under this article as an audiologist to meet either of the following requirements:

(a) Possess a master's degree in audiology from a regionally accredited college or university approved by the board; have completed at least 9 months of supervised clinical experience in audiology; and have successfully completed an examination in audiology as described in subsection (2) or (3).

(b) Possess a doctoral degree in audiology from a regionally accredited college or university approved by the board; have completed at least 9 months of supervised clinical experience in audiology; and have successfully completed an examination in audiology as described in subsection (2) or (3).

(2) The department, in consultation with the board, shall provide that applicants pass an examination dealing with all aspects of the practice of audiology before issuance of a license under this part. The department, in consultation with the board, may develop its own examination and may promulgate rules to establish standards for that examination or for the adoption by reference of an examination, or parts of an examination, developed by an outside entity that it determines offers an appropriate examination. If the department adopts all or part of an examination developed by an outside entity, the department may promulgate rules to adopt by reference any supplement or update to the examination.

(3) Beginning on the effective date of this part and until 1 or more examinations are developed or adopted under subsection (2), the PRAXIS examination in audiology, developed by educational testing services, in existence on the effective date of this part is adopted by reference and considered acceptable for qualification of applicants under this part. Not later than June 30, 2005, the department, in consultation with the board, shall

make a recommendation on whether to develop its own exam, adopt an examination developed by an outside entity, or continue to accept the PRAXIS examination and any update pursuant to rule as further described in subsection (2). The department shall notify the house and senate standing committees on health policy matters of its recommendation.

(4) Notwithstanding subsections (2) and (3), the department shall grant a license to a person who, on the effective date of this part, has been engaged in the practice of audiology, who meets the requirements of subsection (1), who applies for licensure under this part, and who presents to the department proof of passing any past or present version of the PRAXIS examination in audiology or any past or present version of its predecessor, the national teachers examination on speech and language pathology and audiology, both of which were developed by educational testing services. Passage of those examinations is considered fulfillment of the examination requirement of this subsection. The past and present versions of the PRAXIS examination in audiology and all versions of its predecessor, the national teachers examination on speech and language pathology and audiology, both of which were developed by educational testing services, are adopted by reference for purposes of this subsection.

(5) Beginning the license year after the effective date of the rules promulgated under this subsection, an individual shall meet the continuing education requirements of this subsection. The department, in consultation with the board, shall promulgate rules to require licensees seeking renewal to furnish evidence acceptable to the department and board of the successful completion, during the preceding license year, of at least 10 clock hours of continuing education courses or programs related to the practice of audiology and designed to further educate licensees.

(6) The department shall ensure that all approved continuing education courses described in subsection (5) include defined measurements of preknowledge and postknowledge or skill improvements, or both, as a result of the continuing education program.

This act is ordered to take immediate effect.

Approved May 7, 2004.

Filed with Secretary of State May 7, 2004.

[No. 98]

(HB 4172)

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 5129 (MCL 333.5129), as amended by 1995 PA 253.

The People of the State of Michigan enact:

333.5129 Individuals arrested and charged, bound over, or convicted of certain crimes; examination or testing for certain diseases; information and counseling; providing name, address, and telephone number of victim; providing test results to victim; transmitting test results and other medical information; confidentiality; referral of individual for appropriate medical care; financial responsibility; applicability of subsections (2), (3), and (4) to certain individuals; costs; definitions.

Sec. 5129. (1) An individual arrested and charged with violating section 448, 449, 449a, 450, 452, or 455 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a, 750.450, 750.452, and 750.455, or a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute may, upon order of the court, be examined or tested to determine whether the individual has venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome. Examination or test results that indicate the presence of venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome shall be reported to the defendant and, pursuant to sections 5114 and 5114a, to the department and the appropriate local health department for partner notification.

(2) Except as otherwise provided in this section, if an individual is arrested and charged with violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the judge or magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the information on venereal disease and HIV transmission required to be distributed by county clerks under section 5119(1) and shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome. Counseling under this subsection shall be voluntary on the part of the individual.

(3) If a defendant is bound over to circuit court or recorder's court for a violation of section 145a, 338, 338a, 338b, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, and the district court determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant, the district court shall order the defendant to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5),

(6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(4) Except as otherwise provided in this section, upon conviction of a defendant or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, for violating section 145a, 338, 338a, 338b, 448, 449, 449a, 450, 452, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or section 7404 by intravenously using a controlled substance, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance, the court having jurisdiction of the criminal prosecution or juvenile hearing shall order the defendant or child to be examined or tested for venereal disease, hepatitis B infection, and hepatitis C infection and for the presence of HIV or an antibody to HIV. Except as provided in subsection (5), (6), or (7), or as otherwise provided by law, the examinations and tests shall be confidentially administered by a licensed physician, the department of community health, or a local health department. The court also shall order the defendant or child to receive counseling regarding venereal disease, hepatitis B infection, hepatitis C infection, HIV infection, and acquired immunodeficiency syndrome, including, at a minimum, information regarding treatment, transmission, and protective measures.

(5) If the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime consents, the court or probate court shall provide the person or agency conducting the examinations or administering the tests under subsection (3) or (4) with the name, address, and telephone number of the victim or person with whom the defendant or child engaged in sexual penetration or sexual contact or who was exposed to a body fluid of the defendant during the course of the crime. If the victim or person with whom the defendant or child engaged in sexual penetration during the course of the crime is a minor or otherwise incapacitated, the victim's or person's parent, guardian, or person in loco parentis may give consent for purposes of this subsection. After the defendant or child is examined or tested as to the presence of venereal disease, of hepatitis B infection, of hepatitis C infection, or of HIV or an antibody to HIV, the person or agency conducting the examinations or administering the tests shall immediately provide the examination or test results to the victim or person with whom the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, engaged in sexual penetration or sexual contact or who was exposed to a body fluid during the course of the crime and shall refer the victim or other person for appropriate counseling.

(6) The examination or test results and any other medical information obtained from the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the person or agency conducting the examinations or administering the tests under subsection (3) or (4) shall be transmitted to the court or probate court and, after the defendant or child is sentenced or an order of disposition is entered, made part of the court record, but are confidential and shall be disclosed only to 1 or more of the following:

- (a) The defendant or child.
- (b) The local health department.
- (c) The department.

(d) The victim or other person required to be informed of the results under this subsection or subsection (5) or, if the victim or other person is a minor or otherwise incapacitated, to the victim's or other person's parent, guardian, or person in loco parentis.

(e) Upon written authorization of the defendant or child found to be within the provisions of section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or the child's parent, guardian, or person in loco parentis.

- (f) As otherwise provided by law.

(7) If the defendant is placed in the custody of the department of corrections, the court shall transmit a copy of the defendant's examination and test results and other medical information to the department of corrections. If the child found to be within the provisions of section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is placed by the probate court in the custody of a person related to the child or a public or private agency, institution, or facility, the probate court shall transmit a copy of the child's examination or test results to the person related to the child or the director of the agency, institution, or facility. A person or agency that discloses information in compliance with this subsection or subsection (6) is not civilly or criminally liable for making the disclosure. A person or agency that receives test results or other medical information pertaining to HIV infection or acquired immunodeficiency syndrome under this subsection or subsection (6) is subject to section 5131 and shall not disclose the test results or other medical information except as specifically permitted under that section.

(8) If an individual receives counseling or is examined or tested under this section and is found to be infected with a venereal disease, hepatitis B, or hepatitis C or to be HIV infected, the individual shall be referred by the agency providing the counseling or testing for appropriate medical care. The department, the local health department, or any other agency providing counseling or testing under this section is not financially responsible for medical care received by an individual as a result of a referral made under this subsection.

(9) The requirements for the distribution of information concerning venereal disease, counseling concerning venereal disease, and examining or testing for venereal disease under subsections (2), (3), and (4) do not apply to an individual charged with or convicted of violating section 7404 by intravenously using a controlled substance or violating a local ordinance prohibiting the intravenous use of a controlled substance.

(10) The court may, upon conviction or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, order an individual who is examined or tested under this section to pay the actual and reasonable costs of that examination or test incurred by the licensed physician or local health department that administered the examination or test.

(11) An individual who is ordered to pay the costs of an examination or test under subsection (10) shall pay those costs within 30 days after the order is issued or as otherwise provided by the court. The amount ordered to be paid under subsection (10) shall be paid to the clerk of the court, who shall transmit the appropriate amount to the physician or local health department named in the order. If an individual is ordered to pay a combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments upon conviction in addition to the costs ordered under subsection (10), the payments shall be allocated as provided under the probate code of 1939, 1939 PA 288,

MCL 710.21 to 712A.32, the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. An individual who fails to pay the costs within the 30-day period or as otherwise ordered by the court is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(12) As used in this section:

(a) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

(b) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(c) "Victim" includes, but is not limited to, a person subjected to criminal sexual conduct in violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

This act is ordered to take immediate effect.

Approved May 13, 2004.

Filed with Secretary of State May 13, 2004.

[No. 99]

(HB 5427)

AN ACT to amend 1927 PA 372, entitled "An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act," by amending section 12 (MCL 28.432), as amended by 2000 PA 381.

The People of the State of Michigan enact:

28.432 Inapplicability of MCL 28.422 and 28.429; citation as "Janet Kukuk act."

Sec. 12. (1) Sections 2 and 9 do not apply to any of the following:

(a) A police or correctional agency of the United States or of this state or any subdivision of this state.

(b) The United States army, air force, navy, or marine corps.

(c) An organization authorized by law to purchase or receive weapons from the United States or from this state.

(d) The national guard, armed forces reserves, or other duly authorized military organization.

(e) A member of an entity or organization described in subdivisions (a) to (d) for a pistol while engaged in the course of his or her duties with that entity or while going to or returning from those duties.

(f) A United States citizen holding a license to carry a pistol concealed upon his or her person issued by another state.

(g) The regular and ordinary transportation of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms or a licensed dealer.

(h) Purchasing, owning, carrying, possessing, using, or transporting an antique firearm. As used in this subdivision, “antique firearm” means that term as defined in section 231a of the Michigan penal code, 1931 PA 328, MCL 750.231a.

(2) The amendatory act that added subdivision (h) shall be known and may be cited as the “Janet Kukuk act”.

This act is ordered to take immediate effect.

Approved May 13, 2004.

Filed with Secretary of State May 13, 2004.

[No. 100]

(HB 5428)

AN ACT to amend 1927 PA 372, entitled “An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act,” by amending section 9 (MCL 28.429), as amended by 1996 PA 169.

The People of the State of Michigan enact:

28.429 Pistols; safety inspection required; certificate of inspection; exemptions; requirements of pistol presented for inspection; violation as civil infraction; fine.

Sec. 9. (1) A person within the state who owns or comes into possession of a pistol shall, if he or she resides in a city, township, or village having an organized police department, present the pistol for safety inspection to the commissioner or chief of police of the city, township, or village police department or to a duly authorized deputy of the commissioner or chief of police. If that person resides in a part of the county not included within a city, township, or village having an organized police department, he or she shall present the pistol for safety inspection to the sheriff of the county or to a duly authorized deputy of the sheriff. If the person presenting the pistol is eligible to possess a pistol under section 2(1), a certificate of inspection shall be issued in triplicate on a form

provided by the director of the department of state police, containing the name, age, address, description, and signature of the person presenting the pistol for inspection, together with a full description of the pistol. The original of the certificate shall be delivered to the registrant. The duplicate of the certificate shall be mailed within 48 hours to the director of the department of state police and filed and indexed by the department and kept as a permanent official record. The triplicate of the certificate shall be retained and filed in the office of the sheriff, commissioner, or chief of police. This section does not apply to a wholesale or retail dealer in firearms who regularly engages in the business of selling pistols at retail, or to a person who holds a collection of pistols kept for the purpose of display as relics or curios and that are not made for modern ammunition or are permanently deactivated.

(2) A person who presents a pistol for a safety inspection under subsection (1) shall ensure that the pistol is unloaded and that the pistol is equipped with a trigger lock or other disabling mechanism or encased when the pistol is presented for inspection. A person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$50.00.

This act is ordered to take immediate effect.

Approved May 13, 2004.

Filed with Secretary of State May 13, 2004.

[No. 101]

(HB 5429)

AN ACT to amend 1927 PA 372, entitled “An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act,” by amending section 2 (MCL 28.422), as amended by 1994 PA 338.

The People of the State of Michigan enact:

28.422 License to purchase, carry, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; basic pistol safety brochure; forging application; implementation during business hours.

Sec. 2. (1) Except as provided in subsection (2), a person shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, or transport pistols to qualified applicants residing within the city, village, township, or county, as applicable unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network pursuant to any of the following:

(i) Section 464a(1) of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(iii) Section 2950(9) of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(iv) Section 2950a(7) of 1961 PA 236, MCL 600.2950a.

(v) Section 14 of 1846 RS 84, MCL 552.14.

(vi) Section 6b(5) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed pursuant to section 6b(3) of chapter V of 1927 PA 175, MCL 765.6b.

(vii) Section 16b(1) of chapter IX of 1927 PA 175, MCL 769.16b.

(b) The person is 18 years of age or older or, if the seller is licensed pursuant to section 923 of title 18 of the United States Code, 18 USC 923, is 21 years of age or older.

(c) The person is a citizen of the United States and is a legal resident of this state.

(d) A felony charge against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.

(i) The person correctly answers 70% or more of the questions on a basic pistol safety review questionnaire approved by the basic pistol safety review board and provided to the individual free of charge by the licensing authority. If the person fails to correctly answer 70% or more of the questions on the basic pistol safety review questionnaire, the licensing authority shall inform the person of the questions he or she answered incorrectly and allow the person to attempt to complete another basic pistol safety review questionnaire. The person shall not be allowed to attempt to complete more than 2 basic pistol safety review questionnaires on any single day. The licensing authority shall allow the person to attempt to complete the questionnaire during normal business hours on the day the person applies for his or her license.

(4) Applications for licenses under this section shall be signed by the applicant under oath upon forms provided by the director of the department of state police. Licenses to purchase, carry, or transport pistols shall be executed in triplicate upon forms provided by the director of the department of state police and shall be signed by the licensing authority. Three copies of the license shall be delivered to the applicant by the licensing authority.

(5) Upon the sale of the pistol, the seller shall fill out the license forms describing the pistol sold, together with the date of sale, and sign his or her name in ink indicating that the pistol was sold to the licensee. The licensee shall also sign his or her name in ink indicating the purchase of the pistol from the seller. The seller may retain a copy of the license as a record of the sale of the pistol. The licensee shall return 2 copies of the license to the licensing authority within 10 days following the purchase of the pistol.

(6) One copy of the license shall be retained by the licensing authority as an official record for a period of 6 years. The other copy of the license shall be forwarded by the licensing authority within 48 hours to the director of the department of state police. A license is void unless used within 10 days after the date of its issue.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated. This section does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.

(8) The licensing authority shall provide a basic pistol safety brochure to each applicant for a license under this section before the applicant answers the basic pistol safety review questionnaire. A basic pistol safety brochure shall contain, but is not limited to providing, information on all of the following subjects:

- (a) Rules for safe handling and use of pistols.
- (b) Safe storage of pistols.
- (c) Nomenclature and description of various types of pistols.
- (d) The responsibilities of owning a pistol.

(9) The basic pistol safety brochure shall be supplied in addition to the safety pamphlet required by section 9b.

(10) The basic pistol safety brochure required in subsection (8) shall be produced by a national nonprofit membership organization that provides voluntary pistol safety programs that include training individuals in the safe handling and use of pistols.

(11) A person who forges any matter on an application for a license under this section is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(12) A licensing authority shall implement this section during all of the licensing authority's normal business hours and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (6).

This act is ordered to take immediate effect.
Approved May 13, 2004.
Filed with Secretary of State May 13, 2004.

[No. 102]**(HB 5648)**

AN ACT to amend 1939 PA 288, entitled “An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties,” by amending sections 18 and 18m of chapter XIIA (MCL 712A.18 and 712A.18m), section 18 as amended and section 18m as added by 2003 PA 71.

The People of the State of Michigan enact:

CHAPTER XIIA

712A.18 Orders of disposition; reimbursement; hearing; guidelines and model schedule; restitution; condition of probation; community service; fingerprints; report to state police; payment of assessment; registration of juvenile provided in MCL 28.721 to 28.732; release from placement in juvenile boot camp; alternative order of disposition; imposition of sentence in county jail facility; violation of personal protection order; costs; remission of costs.

Sec. 18. (1) If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10), if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

(a) Warn the juvenile or the juvenile’s parents, guardian, or custodian and, except as provided in subsection (7), dismiss the petition.

(b) Place the juvenile on probation, or under supervision in the juvenile’s own home or in the home of an adult who is related to the juvenile. As used in this subdivision, “related” means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by marriage, blood, or adoption. The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile. The court also shall order, as a condition of probation or supervision, that the juvenile shall pay the minimum state cost prescribed by section 18m of this chapter.

(c) If a juvenile is within the court’s jurisdiction under section 2(a) of this chapter, or under section 2(h) of this chapter for a supplemental petition, place the juvenile in a suitable foster care home subject to the court’s supervision. If a juvenile is within the court’s jurisdiction under section 2(b) of this chapter, the court shall not place a juvenile in a foster care home subject to the court’s supervision.

(d) Except as otherwise provided in this subdivision, place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the department of consumer and industry services for the care of juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or agency as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates.

(e) Except as otherwise provided in this subdivision, commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d) or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available. Except for commitment to the family independence agency or a county juvenile agency, an order of commitment under this subdivision to a state institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, or in 1935 PA 220, MCL 400.201 to 400.214, the court shall name the superintendent of the institution to which the juvenile is committed as a special guardian to receive benefits due the juvenile from the government of the United States. An order of commitment under this subdivision to the family independence agency or a county juvenile agency shall name that agency as a special guardian to receive those benefits. The benefits received by the special guardian shall be used to the extent necessary to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay.

(f) Provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items the court determines are necessary.

(g) Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.

(h) Appoint a guardian under section 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5204, in response to a petition filed with the court by a person interested in the juvenile's welfare. If the court appoints a guardian as authorized by this subdivision, it may dismiss the petition under this chapter.

(i) Order the juvenile to engage in community service.

(j) If the court finds that a juvenile has violated a municipal ordinance or a state or federal law, order the juvenile to pay a civil fine in the amount of the civil or penal fine provided by the ordinance or law. Money collected from fines levied under this subsection shall be distributed as provided in section 29 of this chapter.

(k) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, order the juvenile's parent or guardian to personally participate in treatment reasonably available in the parent's or guardian's location.

(l) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the family independence agency under the juvenile boot camp act, 1996 PA 263, MCL 400.1301 to 400.1309, as provided in that act. If the county is a county juvenile agency, however, the court shall commit the juvenile to that county juvenile agency for placement in the program under that act. Upon receiving a report of satisfactory completion of the program from the family independence agency, the court shall authorize the juvenile's release from placement in the juvenile boot camp. Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. To place or commit a juvenile under this subdivision, the court shall determine all of the following:

(i) Placement in a juvenile boot camp will benefit the juvenile.

(ii) The juvenile is physically able to participate in the program.

(iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.

(iv) The juvenile will not be a danger to other juveniles in the boot camp.

(v) There is an opening in a juvenile boot camp program.

(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program.

(m) If the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of section 7403(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7403, the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served. The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile's prior record:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile's culpability in committing the offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the

existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.

(2) An order of disposition placing a juvenile in or committing a juvenile to care outside of the juvenile's own home and under state, county juvenile agency, or court supervision shall contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of care or service. The order shall be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. The amount may be based upon the guidelines and model schedule created under subsection (6). If the juvenile is receiving an adoption support subsidy under sections 115f to 115m of the social welfare act, 1939 PA 280, MCL 400.115f to 400.115m, the amount shall not exceed the amount of the support subsidy. The reimbursement provision applies during the entire period the juvenile remains in care outside of the juvenile's own home and under state, county juvenile agency, or court supervision, unless the juvenile is in the permanent custody of the court. The court shall provide for the collection of all amounts ordered to be reimbursed and the money collected shall be accounted for and reported to the county board of commissioners. Collections to cover delinquent accounts or to pay the balance due on reimbursement orders may be made after a juvenile is released or discharged from care outside the juvenile's own home and under state, county juvenile agency, or court supervision. Twenty-five percent of all amounts collected under an order entered under this subsection shall be credited to the appropriate fund of the county to offset the administrative cost of collections. The balance of all amounts collected under an order entered under this subsection shall be divided in the same ratio in which the county, state, and federal government participate in the cost of care outside the juvenile's own home and under state, county juvenile agency, or court supervision. The court may also collect from the government of the United States benefits paid for the cost of care of a court ward. Money collected for juveniles placed by the court with or committed to the family independence agency or a county juvenile agency shall be accounted for and reported on an individual juvenile basis. In cases of delinquent accounts, the court may also enter an order to intercept state or federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings in order to recover the cost of care or service. The court shall send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice shall include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The court shall provide for the prompt reimbursement of an amount withheld in error or an amount found to exceed the delinquent amount.

(3) An order of disposition placing a juvenile in the juvenile's own home under subsection (1)(b) may contain a provision for reimbursement by the juvenile, parent, guardian, or custodian to the court for the cost of service. If an order is entered under this subsection, an amount due shall be determined and treated in the same manner provided for an order entered under subsection (2).

(4) An order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of this chapter and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of this chapter.

(5) If the court appoints an attorney to represent a juvenile, parent, guardian, or custodian, the court may require in an order entered under this section that the juvenile, parent, guardian, or custodian reimburse the court for attorney fees.

(6) The office of the state court administrator, under the supervision and direction of the supreme court, shall create guidelines that the court may use in determining the ability of the juvenile, parent, guardian, or custodian to pay for care and any costs of service ordered under subsection (2) or (3). The guidelines shall take into account both the income and resources of the juvenile, parent, guardian, or custodian.

(7) If the court finds that a juvenile comes under section 30 of this chapter, the court shall order the juvenile or the juvenile's parent to pay restitution as provided in sections 30 and 31 of this chapter and in sections 44 and 45 of the crime victim's rights act, 1985 PA 87, MCL 780.794 and 780.795.

(8) If the court imposes restitution as a condition of probation, the court shall require the juvenile to do either of the following as an additional condition of probation:

(a) Engage in community service or, with the victim's consent, perform services for the victim.

(b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment.

(9) If the court finds that the juvenile is in intentional default of the payment of restitution, a court may, as provided in section 31 of this chapter, revoke or alter the terms and conditions of probation for nonpayment of restitution. If a juvenile who is ordered to engage in community service intentionally refuses to perform the required community service, the court may revoke or alter the terms and conditions of probation.

(10) The court shall not enter an order of disposition for a juvenile offense as defined in section 1a of 1925 PA 289, MCL 28.241a, or a judgment of sentence for a conviction until the court has examined the court file and has determined that the juvenile's fingerprints have been taken and forwarded as required by section 3 of 1925 PA 289, MCL 28.243, and as required by the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732. If a juvenile has not had his or her fingerprints taken, the court shall do either of the following:

(a) Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's fingerprints can be taken and forwarded.

(b) Order the juvenile committed to the sheriff's custody for taking and forwarding the juvenile's fingerprints.

(11) Upon final disposition, conviction, acquittal, or dismissal of an offense within the court's jurisdiction under section 2(a)(1) of this chapter, using forms approved by the state court administrator, the clerk of the court entering the final disposition, conviction, acquittal, or dismissal shall immediately advise the department of state police of that final disposition, conviction, acquittal, or dismissal as required by section 3 of 1925 PA 289, MCL 28.243. The report to the department of state police shall include information as to the finding of the judge or jury and a summary of the disposition or sentence imposed.

(12) If the court enters an order of disposition based on an act that is a juvenile offense as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act. If the court enters a judgment of conviction under section 2d of this chapter for an offense that is a felony, serious misdemeanor, or specified misdemeanor as defined in section 1 of 1989 PA 196, MCL 780.901, the court shall order the juvenile to pay the assessment as provided in that act.

(13) If the court has entered an order of disposition or a judgment of conviction for a listed offense as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court, the family independence agency, or the county juvenile agency shall register the juvenile or accept the juvenile's registration as provided in the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(14) If the court enters an order of disposition placing a juvenile in a juvenile boot camp program, or committing a juvenile to a county juvenile agency for placement in a juvenile boot camp program, and the court receives from the family independence agency a report that the juvenile has failed to perform satisfactorily in the program, that the juvenile does not meet the program's requirements or is medically unable to participate in the program for more than 25 days, that there is no opening in a juvenile boot camp program, or that the county juvenile agency is unable to place the juvenile in a juvenile boot camp program, the court shall release the juvenile from placement or commitment and enter an alternative order of disposition. A juvenile shall not be placed in a juvenile boot camp under an order of disposition more than once, except that a juvenile returned to the court for a medical condition, because there was no opening in a juvenile boot camp program, or because the county juvenile agency was unable to place the juvenile in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected, an opening becomes available, or the county juvenile agency is able to place the juvenile.

(15) If the juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter for an offense other than a listed offense as defined in section 2(e)(i) to (ix) and (xi) to (xiii) of the sex offenders registration act, 1994 PA 295, MCL 28.722, the court shall determine if the offense is a violation of a law of this state or a local ordinance of a municipality of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age. If so, the order of disposition is for a listed offense as defined in section 2(e)(x) of the sex offenders registration act, 1994 PA 295, MCL 28.722, and the court shall include the basis for that determination on the record and include the determination in the order of disposition.

(16) The court shall not impose a sentence of imprisonment in the county jail under subsection (1)(m) unless the present county jail facility for the juvenile's imprisonment would meet all requirements under federal law and regulations for housing juveniles. The court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.

(17) In a proceeding under section 2(h) of this chapter, this section only applies to a disposition for a violation of a personal protection order and subsequent proceedings.

(18) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, the court shall order the juvenile to pay costs as provided in section 18m of this chapter.

(19) A juvenile who has been ordered to pay the minimum state cost as provided in section 18m of this chapter as a condition of probation or supervision and who is not in willful default of the payment of the minimum state cost may petition the court at any

time for a remission of the payment of any unpaid portion of the minimum state cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum state cost due or modify the method of payment.

712A.18m Payment of costs; minimum amounts; disposition; definitions.

Sec. 18m. (1) If a juvenile is within the court's jurisdiction under section 2(a)(1) of this chapter, and is ordered to pay any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, the court shall order the juvenile to pay costs of not less than the following amount, as applicable:

(a) \$60.00, if the juvenile is found to be within the court's jurisdiction for a felony.

(b) \$45.00, if the juvenile is found to be within the court's jurisdiction for a serious misdemeanor or a specified misdemeanor.

(c) \$40.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor not described in subdivision (b) or of an ordinance violation.

(2) Of the costs ordered to be paid, the clerk of the court shall pay to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, the applicable amount specified as a minimum cost in subsection (1).

(3) If a juvenile who is ordered to pay a minimum state cost under this section is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same juvenile proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in section 29 of this chapter. A fine imposed for a felony, misdemeanor, or ordinance violation shall not be waived unless costs, other than the minimum state cost, are waived.

(4) On the last day of each month, the clerk of the court shall transmit the minimum state cost or portions of minimum state cost collected under this section to the department of treasury for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(5) As used in this section:

(a) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(b) "Minimum state cost" means the applicable minimum cost to be ordered under subsection (1).

(c) "Ordinance violation" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(d) "Serious misdemeanor" means that term as defined in section 61 of the crime victim's rights act, 1985 PA 87, MCL 780.811.

(e) "Specified misdemeanor" means that term as defined in section 1 of 1989 PA 196, MCL 780.901.

This act is ordered to take immediate effect.

Approved May 13, 2004.

Filed with Secretary of State May 13, 2004.

[No. 103]**(HB 4937)**

AN ACT to amend 1965 PA 290, entitled “An act to regulate the use, construction, installation and repair of boilers; to create a board of boiler rules; to prescribe uniform rules and regulations for boilers; to provide for the licensing of boiler inspectors, installers and repairers; to provide fees for licenses, permits, inspections and certificates; to provide penalties for the violation of this act; and to repeal certain acts and parts of acts,” by amending sections 2, 3, and 7a (MCL 408.752, 408.753, and 408.757a), sections 2 and 3 as amended by 1986 PA 277 and section 7a as amended by 1982 PA 176.

The People of the State of Michigan enact:

408.752 Definitions.

Sec. 2. As used in this act:

(a) “Antique steam boiler” means a boiler that is no longer used in production applications and is used to demonstrate the historical significance of steam boilers in American history.

(b) “Board” means the board of boiler rules created in section 3.

(c) “Boiler” means a closed vessel in which water is heated, steam is generated, steam is superheated, or a combination thereof, under pressure or vacuum by the application of heat from combustible fuels, electricity, or nuclear energy. Boiler does not include facilities of an integral part of a continuous processing unit but does include a fired unit for heating or vaporizing liquids other than water, if the unit is separate from a processing system and is complete within itself.

(d) “Boiler for agricultural purposes” means a portable boiler used in a field or similar open area for the sole purpose of operating farm equipment or farm machinery.

(e) “Certificate inspection” means an inspection, the report of which is used by the chief inspector to decide whether a certificate, as provided by section 19, shall be issued. The certificate inspection shall be an internal inspection if construction allows; otherwise the certificate inspection shall be as complete an inspection as possible.

(f) “Director” means the director of labor and economic growth or a representative designated by the director.

(g) “External inspection” means an inspection which does not involve examination of the internal surfaces of the pressure parts of the boiler.

(h) “Heating surface” means the heating surface determined by the boiler manufacturer and recorded in the manufacturer’s data report or by rules established by the board for a boiler if the manufacturer’s data report is not available or the boiler is not stamped with its heating surface.

(i) “High pressure, high temperature water boiler” means a water heating boiler operating at pressure exceeding 160 p.s.i.g. or temperatures exceeding 250 degrees Fahrenheit.

(j) “Low pressure boiler” means a steam boiler operated at pressures not exceeding 15 p.s.i.g., or a hot water heating boiler operated at pressures not exceeding 160 p.s.i.g. or temperatures not exceeding 250 degrees Fahrenheit.

(k) “P.S.I.G.” means pounds per square inch gauge.