

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5692 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 16, 2004.

Compiler's note: House Bill No. 5692, referred to in enacting section 2, was filed with the Secretary of State June 16, 2004, and became P.A. 2004, No. 156, Eff. Sept. 1, 2004.

[No. 156]**(HB 5692)**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 539d (MCL 750.539d).

The People of the State of Michigan enact:

750.539d Installation, placement, or use of device for observing, recording, transmitting, photographing or eavesdropping in private place.

Sec. 539d. (1) Except as otherwise provided in this section, a person shall not do either of the following:

(a) Install, place, or use in any private place, without the consent of the person or persons entitled to privacy in that place, any device for observing, recording, transmitting, photographing, or eavesdropping upon the sounds or events in that place.

(b) Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

(2) This section does not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

(3) A person who violates or attempts to violate this section is guilty of a crime as follows:

(a) For a violation or attempted violation of subsection (1)(a):

(i) Except as provided in subparagraph (ii), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(ii) If the person was previously convicted of violating or attempting to violate this section, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(b) For a violation or attempted violation of subsection (1)(b), the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate subsection (1)(a) or (b).

Effective date.

Enacting section 1. This amendatory act takes effect September 1, 2004.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 918 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 16, 2004.

Compiler's note: Senate Bill No. 918, referred to in enacting section 2, was filed with the Secretary of State June 16, 2004, and became P.A. 2004, No. 155, Eff. Sept. 1, 2004.

[No. 157]

(HB 5693)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 16z of chapter XVII (MCL 777.16z), as amended by 2004 PA 2.

The People of the State of Michigan enact:

CHAPTER XVII

777.16z MCL 750.535 to 750.552b; felonies to which chapter applicable.

Sec. 16z. This chapter applies to the following felonies enumerated in chapter 750 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
750.535(2)	Property	D	Receiving or concealing stolen property having a value of \$20,000 or more or with prior convictions	10
750.535(3)	Property	E	Receiving or concealing stolen property having a value of \$1,000 to \$20,000 or with prior convictions	5
750.535(7)	Property	E	Receiving or concealing stolen motor vehicle	5
750.535a(2)	Pub ord	D	Operating a chop shop	10
750.535a(3)	Pub ord	D	Operating a chop shop, subsequent violation	10
750.535b	Pub saf	E	Stolen firearms or ammunition	10
750.539c	Pub ord	H	Eavesdropping	2
750.539d(3)(a)(i)	Pub ord	H	Installing, placing, or using eavesdropping device	2
750.539d(3)(a)(ii)	Pub ord	E	Installing, placing, or using eavesdropping device — subsequent offense	5
750.539d(3)(b)	Pub ord	E	Distributing, disseminating, or transmitting recording or image obtained by eavesdropping	5
750.539e	Pub ord	H	Divulging or using information obtained by eavesdropping	2
750.539f	Pub ord	H	Manufacture or possession of eavesdropping device	2
750.539j(2)(a)(i)	Pub ord	H	Lewd surveillance or capturing lewd image	2
750.539j(2)(a)(ii)	Pub ord	E	Lewd surveillance or capturing lewd image — subsequent offense	5
750.539j(2)(b)	Pub ord	E	Distributing, disseminating, or transmitting visual image obtained by surveillance	5
750.540	Pub ord	H	Tapping or cutting telephone lines	2
750.540c(4)	Property	F	Telecommunication violation	4
750.540f(2)	Property	E	Knowingly publishing a communications access device with prior convictions	5

750.540g(1)(c)	Property	E	Diverting telecommunication services having a value of \$1,000 to \$20,000 or with prior convictions	5
750.540g(1)(d)	Property	D	Diverting telecommunications services having a value of \$20,000 or more or with prior convictions	10
750.543f	Person	A	Terrorism without causing death	Life
750.543h(3)(a)	Pub ord	B	Hindering prosecution of terrorism — certain terrorist acts	20
750.543h(3)(b)	Pub ord	A	Hindering prosecution of terrorism — act of terrorism	Life
750.543k	Pub saf	B	Soliciting or providing material support for terrorism or terrorist acts	20
750.543m	Pub ord	B	Threat or false report of terrorism	20
750.543p	Pub saf	B	Use of internet or telecommunications to commit certain terrorist acts	20
750.543r	Pub saf	B	Possession of vulnerable target information with intent to commit certain terrorist acts	20
750.545	Pub ord	E	Misprision of treason	5
750.552b	Property	F	Trespassing on correctional facility property	4

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) Senate Bill No. 918.
- (b) House Bill No. 5692.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 16, 2004.

Compiler's note: Senate Bill No. 918, referred to in enacting section 1, was filed with the Secretary of State June 16, 2004, and became P.A. 2004, No. 155, Eff. Sept. 1, 2004.

House Bill No. 5692, also referred to in enacting section 1, was filed with the Secretary of State June 16, 2004, and became P.A. 2004, No. 156, Eff. Sept. 1, 2004.

[No. 158]

(HB 4344)

AN ACT to amend 1975 PA 197, entitled "An act to provide for the establishment of a downtown development authority; to prescribe its powers and duties; to correct and prevent deterioration in business districts; to encourage historic preservation; to authorize the acquisition and disposal of interests in real and personal property; to authorize the

creation and implementation of development plans in the districts; to promote the economic growth of the districts; to create a board; to prescribe its powers and duties; to authorize the levy and collection of taxes; to authorize the issuance of bonds and other evidences of indebtedness; to authorize the use of tax increment financing; to reimburse downtown development authorities for certain losses of tax increment revenues; and to prescribe the powers and duties of certain state officials,” by amending section 1 (MCL 125.1651), as amended by 2004 PA 66.

The People of the State of Michigan enact:

125.1651 Definitions.

Sec. 1. As used in this act:

(a) “Advance” means a transfer of funds made by a municipality to an authority or to another person on behalf of the authority in anticipation of repayment by the authority. Evidence of the intent to repay an advance may include, but is not limited to, an executed agreement to repay, provisions contained in a tax increment financing plan approved prior to the advance, or a resolution of the authority or the municipality.

(b) “Assessed value” means 1 of the following:

(i) For valuations made before January 1, 1995, the state equalized valuation as determined under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(ii) For valuations made after December 31, 1994, the taxable value as determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(c) “Authority” means a downtown development authority created pursuant to this act.

(d) “Board” means the governing body of an authority.

(e) “Business district” means an area in the downtown of a municipality zoned and used principally for business.

(f) “Captured assessed value” means the amount in any 1 year by which the current assessed value of the project area, including the assessed value of property for which specific local taxes are paid in lieu of property taxes as determined in subdivision (y), exceeds the initial assessed value. The state tax commission shall prescribe the method for calculating captured assessed value.

(g) “Chief executive officer” means the mayor or city manager of a city, the president or village manager of a village, or the supervisor of a township or, if designated by the township board for purposes of this act, the township superintendent or township manager of a township.

(h) “Development area” means that area to which a development plan is applicable.

(i) “Development plan” means that information and those requirements for a development plan set forth in section 17.

(j) “Development program” means the implementation of the development plan.

(k) “Downtown district” means that part of an area in a business district that is specifically designated by ordinance of the governing body of the municipality pursuant to this act. A downtown district may include 1 or more separate and distinct geographic areas in a business district as determined by the municipality if the municipality is a city that surrounds another city and that other city lies between the 2 separate and distinct geographic areas. If the downtown district contains more than 1 separate and distinct geographic area in the downtown district, the separate and distinct geographic areas shall be considered 1 downtown district.

(l) “Eligible advance” means an advance made before August 19, 1993.

(m) “Eligible obligation” means an obligation issued or incurred by an authority or by a municipality on behalf of an authority before August 19, 1993 and its subsequent refunding by a qualified refunding obligation. Eligible obligation includes an authority’s written agreement entered into before August 19, 1993 to pay an obligation issued after August 18, 1993 and before December 31, 1996 by another entity on behalf of the authority.

(n) “Fire alarm system” means a system designed to detect and annunciate the presence of fire, or by-products of fire. Fire alarm system includes smoke detectors.

(o) “Fiscal year” means the fiscal year of the authority.

(p) “Governing body of a municipality” means the elected body of a municipality having legislative powers.

(q) “Initial assessed value” means the assessed value, as equalized, of all the taxable property within the boundaries of the development area at the time the ordinance establishing the tax increment financing plan is approved, as shown by the most recent assessment roll of the municipality for which equalization has been completed at the time the resolution is adopted. Property exempt from taxation at the time of the determination of the initial assessed value shall be included as zero. For the purpose of determining initial assessed value, property for which a specific local tax is paid in lieu of a property tax shall not be considered to be property that is exempt from taxation. The initial assessed value of property for which a specific local tax was paid in lieu of a property tax shall be determined as provided in subdivision (y). In the case of a municipality having a population of less than 35,000 that established an authority prior to 1985, created a district or districts, and approved a development plan or tax increment financing plan or amendments to a plan, and which plan or tax increment financing plan or amendments to a plan, and which plan expired by its terms December 31, 1991, the initial assessed value for the purpose of any plan or plan amendment adopted as an extension of the expired plan shall be determined as if the plan had not expired December 31, 1991. For a development area designated before 1997 in which a renaissance zone has subsequently been designated pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, the initial assessed value of the development area otherwise determined under this subdivision shall be reduced by the amount by which the current assessed value of the development area was reduced in 1997 due to the exemption of property under section 7ff of the general property tax act, 1893 PA 206, MCL 211.7ff, but in no case shall the initial assessed value be less than zero.

(r) “Municipality” means a city, village, or township.

(s) “Obligation” means a written promise to pay, whether evidenced by a contract, agreement, lease, sublease, bond, or note, or a requirement to pay imposed by law. An obligation does not include a payment required solely because of default upon an obligation, employee salaries, or consideration paid for the use of municipal offices. An obligation does not include those bonds that have been economically defeased by refunding bonds issued under this act. Obligation includes, but is not limited to, the following:

(i) A requirement to pay proceeds derived from ad valorem property taxes or taxes levied in lieu of ad valorem property taxes.

(ii) A management contract or a contract for professional services.

(iii) A payment required on a contract, agreement, bond, or note if the requirement to make or assume the payment arose before August 19, 1993.

(iv) A requirement to pay or reimburse a person for the cost of insurance for, or to maintain, property subject to a lease, land contract, purchase agreement, or other agreement.

(v) A letter of credit, paying agent, transfer agent, bond registrar, or trustee fee associated with a contract, agreement, bond, or note.

(t) “On behalf of an authority”, in relation to an eligible advance made by a municipality, or an eligible obligation or other protected obligation issued or incurred by a municipality, means in anticipation that an authority would transfer tax increment revenues or reimburse the municipality from tax increment revenues in an amount sufficient to fully make payment required by the eligible advance made by the municipality, or eligible obligation or other protected obligation issued or incurred by the municipality, if the anticipation of the transfer or receipt of tax increment revenues from the authority is pursuant to or evidenced by 1 or more of the following:

(i) A reimbursement agreement between the municipality and an authority it established.

(ii) A requirement imposed by law that the authority transfer tax increment revenues to the municipality.

(iii) A resolution of the authority agreeing to make payments to the incorporating unit.

(iv) Provisions in a tax increment financing plan describing the project for which the obligation was incurred.

(u) “Operations” means office maintenance, including salaries and expenses of employees, office supplies, consultation fees, design costs, and other expenses incurred in the daily management of the authority and planning of its activities.

(v) “Other protected obligation” means:

(i) A qualified refunding obligation issued to refund an obligation described in subparagraph (ii), (iii), or (iv), an obligation that is not a qualified refunding obligation that is issued to refund an eligible obligation, or a qualified refunding obligation issued to refund an obligation described in this subparagraph.

(ii) An obligation issued or incurred by an authority or by a municipality on behalf of an authority after August 19, 1993, but before December 31, 1994, to finance a project described in a tax increment finance plan approved by the municipality in accordance with this act before December 31, 1993, for which a contract for final design is entered into by or on behalf of the municipality or authority before March 1, 1994 or for which a written agreement with a developer, titled preferred development agreement, was entered into by or on behalf of the municipality or authority in July 1993.

(iii) An obligation incurred by an authority or municipality after August 19, 1993, to reimburse a party to a development agreement entered into by a municipality or authority before August 19, 1993, for a project described in a tax increment financing plan approved in accordance with this act before August 19, 1993, and undertaken and installed by that party in accordance with the development agreement.

(iv) An obligation incurred by the authority evidenced by or to finance a contract to purchase real property within a development area or a contract to develop that property within the development area, or both, if all of the following requirements are met:

(A) The authority purchased the real property in 1993.

(B) Before June 30, 1995, the authority enters a contract for the development of the real property located within the development area.

(C) In 1993, the authority or municipality on behalf of the authority received approval for a grant from both of the following:

(I) The department of natural resources for site reclamation of the real property.

(II) The department of consumer and industry services for development of the real property.

(v) An ongoing management or professional services contract with the governing body of a county which was entered into before March 1, 1994 and which was preceded by a series of limited term management or professional services contracts with the governing body of the county, the last of which was entered into before August 19, 1993.

(vi) A loan from a municipality to an authority if the loan was approved by the legislative body of the municipality on April 18, 1994.

(vii) Funds expended to match a grant received by a municipality on behalf of an authority for sidewalk improvements from the Michigan department of transportation if the legislative body of the municipality approved the grant application on April 5, 1993 and the grant was received by the municipality in June 1993.

(viii) For taxes captured in 1994, an obligation described in this subparagraph issued or incurred to finance a project. An obligation is considered issued or incurred to finance a project described in this subparagraph only if all of the following are met:

(A) The obligation requires raising capital for the project or paying for the project, whether or not a borrowing is involved.

(B) The obligation was part of a development plan and the tax increment financing plan was approved by a municipality on May 6, 1991.

(C) The obligation is in the form of a written memorandum of understanding between a municipality and a public utility dated October 27, 1994.

(D) The authority or municipality captured school taxes during 1994.

(w) “Public facility” means a street, plaza, pedestrian mall, and any improvements to a street, plaza, or pedestrian mall including street furniture and beautification, park, parking facility, recreational facility, right-of-way, structure, waterway, bridge, lake, pond, canal, utility line or pipe, building, and access routes to any of the foregoing, designed and dedicated to use by the public generally, or used by a public agency. Public facility includes an improvement to a facility used by the public or a public facility as those terms are defined in section 1 of 1966 PA 1, MCL 125.1351, which improvement is made to comply with the barrier free design requirements of the state construction code promulgated under the Stille-DeRossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531.

(x) “Qualified refunding obligation” means an obligation issued or incurred by an authority or by a municipality on behalf of an authority to refund an obligation if the refunding obligation meets both of the following:

(i) The net present value of the principal and interest to be paid on the refunding obligation, including the cost of issuance, will be less than the net present value of the principal and interest to be paid on the obligation being refunded, as calculated using a method approved by the department of treasury.

(ii) The net present value of the sum of the tax increment revenues described in subdivision (aa)(i) and the distributions under section 13b to repay the refunding obligation will not be greater than the net present value of the sum of the tax increment revenues described in subdivision (aa)(i) and the distributions under section 13b to repay

the obligation being refunded, as calculated using a method approved by the department of treasury.

(y) “Specific local tax” means a tax levied under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, and 1953 PA 189, MCL 211.181 to 211.182. The initial assessed value or current assessed value of property subject to a specific local tax shall be the quotient of the specific local tax paid divided by the ad valorem millage rate. However, after 1993, the state tax commission shall prescribe the method for calculating the initial assessed value and current assessed value of property for which a specific local tax was paid in lieu of a property tax.

(z) “State fiscal year” means the annual period commencing October 1 of each year.

(aa) “Tax increment revenues” means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to the following requirements:

(i) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions other than the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area for any purpose authorized by this act.

(ii) Tax increment revenues include ad valorem property taxes and specific local taxes attributable to the application of the levy of the state pursuant to the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary, without regard to subparagraph (i), to repay eligible advances, eligible obligations, and other protected obligations.

(iii) Tax increment revenues do not include any of the following:

(A) Ad valorem property taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value or specific local taxes attributable to such ad valorem property taxes.

(B) Ad valorem property taxes excluded by the tax increment financing plan of the authority from the determination of the amount of tax increment revenues to be transmitted to the authority or specific local taxes attributable to such ad valorem property taxes.

(C) Ad valorem property taxes exempted from capture under section 3(3) or specific local taxes attributable to such ad valorem property taxes.

(iv) The amount of tax increment revenues authorized to be included under subparagraph (ii), and required to be transmitted to the authority under section 14(1), from ad valorem property taxes and specific local taxes attributable to the application of the levy of the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, a local school district or an intermediate school district upon the captured assessed value of real and personal property in a development area shall be determined separately for the levy by the state, each school district, and each intermediate school district as the product of sub-subparagraphs (A) and (B):

(A) The percentage that the total ad valorem taxes and specific local taxes available for distribution by law to the state, local school district, or intermediate school district,

respectively, bears to the aggregate amount of ad valorem millage taxes and specific taxes available for distribution by law to the state, each local school district, and each intermediate school district.

(B) The maximum amount of ad valorem property taxes and specific local taxes considered tax increment revenues under subparagraph (ii).

This act is ordered to take immediate effect.

Approved June 17, 2004.

Filed with Secretary of State June 17, 2004.

[No. 159]

(HB 5307)

AN ACT to enact the uniform principal and income act; to prescribe the manner in which receipts and expenditures of trusts and estates are credited and charged between income and principal, and the manner in which income is apportioned among beneficiaries at the beginning and upon the termination of a trust or estate; to make uniform the law with respect to principal and income allocation; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE 1

555.501 Short title.

Sec. 101. This act shall be known and may be cited as the “uniform principal and income act”.

555.502 Definitions.

Sec. 102. As used in this act:

(a) “Accounting period” means a calendar year unless another 12-month period is selected by a fiduciary. Accounting period includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(b) “Beneficiary” means, in the case of a decedent’s estate, an heir, legatee, or devisee and, in the case of a trust, an income beneficiary or remainder beneficiary.

(c) “Fiduciary” means a personal representative or trustee. Fiduciary includes an executor, administrator, successor personal representative, special personal representative, and a person performing substantially the same function as 1 or more of them.

(d) “Income” means money or property that a fiduciary receives as current return from a principal asset. Income includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

(e) “Income beneficiary” means a person to whom net income of a trust is or may be payable.

(f) “Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee’s discretion.

(g) “Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(h) “Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this act to or from income during the period.

(i) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; governmental subdivision, agency, or instrumentality; public corporation; or another legal or commercial entity.

(j) “Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(k) “Remainder beneficiary” means a person entitled to receive principal when an income interest ends.

(l) “Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(m) “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

555.503 Duties of fiduciary; allocation of receipts and disbursements to or between principal and income; discretionary power; impartiality.

Sec. 103. (1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter found within the scope of articles 2 and 3, a fiduciary shall do all of the following:

(a) Administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this act.

(b) Administer a trust or estate in accordance with this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(c) Add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted under this act.

(3) In exercising the power to adjust under section 104 or a discretionary power of administration regarding a matter within the scope of this act, whether granted by the terms of a trust or a will, or as provided in this act, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor 1 or more of the beneficiaries. A determination in accordance with this act is presumed to be fair and reasonable to all of the beneficiaries.

555.504 Adjustment between principal and income; factors; policy; circumstances prohibiting adjustment; exercise of power by cofiduciary; release of or limitation on power to adjust.

Sec. 104. (1) A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust or estate assets as a prudent investor, the terms of the trust or will describe the amount that may or must

be distributed to a beneficiary by referring to the trust's or estate's income, and the fiduciary determines, after applying the provisions in section 103(1) and (2), that the fiduciary is unable to comply with section 103(3).

(2) In deciding whether and to what extent to exercise the power conferred by subsection (1), a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries.

(3) In exercising discretion under this section, a professional trustee may adopt a policy that applies to all trusts and estates, or a policy that applies to individual trusts or estates or classes of trusts or estates, stating whether and under what conditions it will use the adjustment power and the method of making adjustments.

(4) A fiduciary shall not make an adjustment that does 1 or more of the following or under 1 or more of the following circumstances:

(a) Diminishes the income interest in a trust or estate that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment.

(b) Reduces the actuarial value of the income interest in a trust or estate to which a person transfers property with the intent to qualify for a gift tax exclusion.

(c) Changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust or estate assets.

(d) Diminishes any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

(e) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(f) If possessing or exercising the power to make an adjustment causes all or part of the trust or estate assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment.

(g) If the fiduciary is a beneficiary of the trust or estate.

(h) If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly.

(5) If subsection (4)(e), (f), (g), or (h) applies to a fiduciary and there is more than 1 fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust or will.

(6) A fiduciary may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subsection (4)(a) through (f) or (4)(h) or if the fiduciary determines that possessing or exercising the power will or may deprive the trust or estate of a tax benefit or impose a tax burden not described in subsection (4). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(7) Terms of a trust or will that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust or will that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (1).

555.505 Exercise of discretionary power by fiduciary; limitation on court to order; decision; petition; burden of proof.

Sec. 105. (1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) The decisions to which subsection (1) applies include:

(a) A decision under section 104(1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust or estate and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by section 104(1).

(c) A decision under section 104(3) to adopt a policy applicable to individual trusts or estates or to classes of trusts or estates.

(3) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(a) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust or estate to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust or estate, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from 1 or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust or estate.

(c) To the extent that the court is unable, after applying subdivisions (a) and (b), to place the beneficiaries, the trust or estate, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to 1 or more of the beneficiaries or the trust or estate or both.

(4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this act will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

ARTICLE 2

555.601 Death or termination of trust; duties of fiduciary.

Sec. 201. After the decedent dies, in the case of an estate, or after an income interest in a trust ends, all of the following apply:

(a) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the provisions of articles 3 through 5 that apply to trustees and as provided in subdivision (e). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(b) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of articles 3 through 5 that apply to trustees and by doing all the following:

(i) Including in net income all income from property used to discharge liabilities.

(ii) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

(iii) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(c) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subdivision (b) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(d) A fiduciary shall distribute the net income remaining after distributions required by subdivision (c) in the manner described in section 202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(e) A fiduciary may not reduce principal or income receipts from property described in subdivision (a) because of a payment or disbursement, or both, described in section 501 or 502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts

that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

555.602 Beneficiary's share of net income; determination; maintenance of records by fiduciary.

Sec. 202. (1) Each beneficiary described in section 201(d) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. For purposes of this section, the fiduciary may estimate the value of assets for which market values are not readily available. If a fiduciary makes more than 1 distribution of assets to beneficiaries to whom this section applies, each beneficiary, including a beneficiary who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the provisions in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

ARTICLE 3

555.701 Income interest; beginning and ending date; conditions.

Sec. 301. (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust on 1 of the following:

(a) The date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life.

(b) The date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate.

(c) The date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

555.702 Allocation of income receipt or disbursement; occurrence of due date; accrual.

Sec. 302. (1) Except as provided in section 201(a), a trustee shall allocate an income receipt or disbursement to principal if its due date occurs before the decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which the decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which the decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this act. Distributions to shareholders or other owners from an entity to which section 401 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

555.703 Undistributed income.

Sec. 303. (1) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. Undistributed income does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in this subsection, when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust. If the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

ARTICLE 4

555.801 “Entity” defined; allocation to income money received; allocation of receipts to principal; money received in partial liquidation; limitation; statement by entity on source or character of distribution.

Sec. 401. (1) As used in this section, “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or other organization in which a trustee has an interest, other than a trust or estate to which section 402 applies, a business or other activity to which section 403 applies, or an asset-backed security to which section 415 applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money.

(b) Money received in 1 distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity.

(c) Money received in total liquidation of the entity, or in partial liquidation of the entity as prescribed by subsections (4) and (5).

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation under either of the following circumstances:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation.

(b) If the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity’s gross assets, as shown by the entity’s year-end financial statements immediately preceding the initial receipt.

(5) Money is not received in partial liquidation, nor may it be taken into account under subsection (4)(b), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity’s board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation’s board of directors.

555.802 Income; principal; allocation of amounts received as distributions from trust or purchased interest.

Sec. 402. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 401 or 415 applies to a receipt from the trust.

555.803 Separate accounting for business or other activity.

Sec. 403. (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of business.

(3) A business or other activity for which a trustee may maintain separate accounting records include all of the following:

- (a) A retail, manufacturing, service, and other traditional business activity.
- (b) Farming.
- (c) Raising and selling livestock and other animals.
- (d) Management of rental property.
- (e) Extraction of minerals and other natural resources.
- (f) A timber operation.
- (g) An activity to which section 414 applies.

555.804 Principal; allocations.

Sec. 404. A trustee shall allocate to principal all of the following:

(a) To the extent not allocated to income under this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.

(b) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article.

(c) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 502(1)(g) or for other reasons to the extent not based on the loss of income.

(d) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(e) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(f) Other receipts as provided in sections 408 to 415 of this article.

555.805 Receipts from rental property.

Sec. 405. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a

lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

555.806 Interest received; allocation to income; proceeds of sale; allocation to principal.

Sec. 406. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(3) This section does not apply to an obligation to which section 409, 410, 411, 412, 414, or 415 applies.

555.807 Life insurance proceeds; other contracts; allocations.

Sec. 407. (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 403, loss of profits from a business.

(3) This section does not apply to a payment to which section 409 applies.

555.808 Insubstantial allocation.

Sec. 408. If a trustee determines that an allocation between principal and income required by section 409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless 1 or more of the circumstances described in section 104(4) apply to the allocation. This power may be exercised by a cofiduciary in the circumstances described in section 104(5) and may be released for the reasons and in the manner described in section 104(6). An allocation is presumed to be insubstantial if 1 or more of the following apply:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%.

(b) The value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

555.809 Payment allocation.

Sec. 409. (1) As used in this section, “payment” means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, or a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(4) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(5) This section does not apply to payments to which section 410 applies.

555.810 Liquidating asset; allocation of receipts.

Sec. 410. (1) As used in this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. Liquidating asset includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. Liquidating asset does not include a payment subject to section 409, natural resources subject to section 411, timber subject to section 412, an activity subject to section 414, an asset subject to section 415, or an asset for which the trustee establishes a reserve for depreciation under section 503.

(2) A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

555.811 Receipts from minerals, water, or other natural resources; allocations.

Sec. 411. (1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% must be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in subdivision (a), (b), or (c), 90% of the net amount received must be allocated to principal and the balance to income.

(2) Except as provided in subsection (4), a trustee shall allocate to income an amount received on account of an interest in water that is renewable. If the interest in water is not renewable, the trustee shall allocate 90% of the amount to principal and the balance to income.

(3) This act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.

555.812 Net receipts from sale of timber; allocations.

Sec. 412. (1) Except as provided in subsection (4), to the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest.

(b) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber.

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions (a) and (b).

(d) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision (a), (b), or (c).

(2) In determining net receipts to be allocated pursuant to subsection (1), a trustee may deduct and transfer to principal a reasonable amount for depletion.

(3) This act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this act.

555.813 Marital deduction; insufficient income from or use of trust assets; actions to be taken by trustee.

Sec. 413. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or

exercise the power conferred by section 104(1). The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

555.814 Derivative transactions; gain or loss realized from exercise of option; allocations.

Sec. 414. (1) As used in this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee accounts for transactions in derivatives under this section, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

555.815 Asset-backed security; allocation of payments.

Sec. 415. (1) As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. Asset-backed security includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. Asset-backed security does not include an asset to which section 401 or 409 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets of an asset-backed security, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives 1 or more payments in exchange for the trust’s entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is 1 of a series of payments that will result in the liquidation of the trust’s interest in the security over more than 1 accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

ARTICLE 5

555.901 Income disbursements.

Sec. 501. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which section 201(b)(*ii*) or (*iii*) applies:

(a) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.

(b) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

555.902 Principal disbursements.

Sec. 502. (1) A trustee shall make the following disbursements from principal:

(a) The remaining 1/2 of the disbursements described in section 501(a) and (b).

(b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale.

(c) Payments on the principal of a trust debt.

(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property.

(e) Premiums paid on a policy of insurance not described in section 501(d) of which the trust is the owner and beneficiary.

(f) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust.

(g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

555.903 Depreciation; amount transferred to principal.

Sec. 503. (1) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer an amount for depreciation as follows:

(a) An amount for that portion of real property used or available for use by a beneficiary as a residence or an amount for tangible personal property held or made available for the personal use or enjoyment of a beneficiary.

(b) An amount during the administration of a decedent's estate.

(c) An amount under this section, if the trustee is accounting under section 403 for the business or other activity in which the asset is used.

(3) An amount transferred to principal need not be held as a separate fund.

555.904 Principal disbursement; transfer of amount to provide reserve.

Sec. 504. (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in 1 or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs.

(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments.

(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions.

(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments.

(e) Disbursements described in section 502(1)(g).

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

555.905 Tax payments.

Sec. 505. (1) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately as follows:

(a) From income to the extent that receipts from the entity are allocated to income.

(b) From principal to the extent that:

(i) Receipts from the entity are allocated to principal.

(ii) The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (a) and subparagraph (i).

(4) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

555.906 Income beneficiaries and remainder benefits; adjustments between principal and income.

Sec. 506. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from 1 or more of the following:

(a) Elections and decisions, other than those described in subsection (2), that the fiduciary makes from time to time regarding tax matters.

(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust.

(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

ARTICLE 6

555.1001 Application and construction of act.

Sec. 601. In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to the subject matter of this act among states that enact it.

555.1002 Severability.

Sec. 602. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

555.1003 Repeal of MCL 555.51 to 555.68.

Sec. 603. The revised uniform principal and income act, 1965 PA 340, MCL 555.51 to 555.68, is repealed.

555.1004 Effective date.

Sec. 604. This act takes effect September 1, 2004.

555.1005 Applicability to trust or estate on effective date of act.

Sec. 605. This act applies to each trust or decedent's estate existing on the effective date of this act except as otherwise expressly provided in the will or terms of the trust or in this act.

This act is ordered to take immediate effect.

Approved June 18, 2004.

Filed with Secretary of State June 18, 2004.

[No. 160]**(HB 5029)**

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 40103 (MCL 324.40103), as amended by 2000 PA 191, and by adding section 40110a.

The People of the State of Michigan enact:

324.40103 Definitions; G to R.

Sec. 40103. (1) “Game” means any of the following animals but does not include privately owned cervidae species located on a registered cervidae livestock facility as that term is defined in the privately owned cervidae producers marketing act:

- (a) Badger.
- (b) Bear.
- (c) Beaver.
- (d) Bobcat.
- (e) Brant.
- (f) Coot.
- (g) Coyote.
- (h) Crow.
- (i) Deer.
- (j) Duck.
- (k) Elk.
- (l) Fisher.
- (m) Florida gallinule.
- (n) Fox.
- (o) Geese.
- (p) Hare.
- (q) Hungarian partridge.
- (r) Marten.
- (s) Mink.
- (t) Moose.
- (u) Mourning dove.
- (v) Muskrat.
- (w) Opossum.
- (x) Otter.

- (y) Pheasant.
- (z) Quail.
- (aa) Rabbit.
- (bb) Raccoon.
- (cc) Ruffed grouse.
- (dd) Sharptailed grouse.
- (ee) Skunk.
- (ff) Snipe.
- (gg) Sora rail.
- (hh) Squirrel.
- (ii) Weasel.
- (jj) Wild turkey.
- (kk) Woodchuck.
- (ll) Woodcock.
- (mm) Virginia rail.

(2) “Interim order of the department” means an order of the department issued under section 40108.

(3) “Kind” means an animal’s sex, age, or physical characteristics.

(4) “Normal agricultural practices” means generally accepted agricultural and management practices as defined by the commission of agriculture.

(5) “Open season” means the dates during which game may be legally taken.

(6) “Parts” means any or all portions of an animal, including the skin, plumage, hide, fur, entire body, or egg of an animal.

(7) “Protected” or “protected animal” means an animal or kind of animal that is designated by the department as an animal that shall not be taken.

(8) “Residence” means a permanent building serving as a temporary or permanent home. Residence may include a cottage, cabin, or mobile home, but does not include a structure designed primarily for taking game, a tree blind, a tent, a recreational or other vehicle, or a camper.

324.40110a Mourning doves; establishment of open season; stamp; fee; disposition of money received; hunting guide; information to be included.

Sec. 40110a. (1) The legislature hereby authorizes the establishment of the first open season for mourning doves. The commission may issue orders pertaining to mourning doves for each of the purposes listed in section 40113a, including, but not limited to, orders establishing the first open season for mourning doves.

(2) A person shall not hunt mourning doves unless, in addition to the small game license required by section 43523, the person has a current mourning dove stamp. The format of the mourning dove stamp shall be prescribed by the department. The fee for a mourning dove stamp is \$2.00.

(3) The department shall transmit money received from the sale of mourning dove stamps to the state treasurer. The state treasurer shall deposit the money as follows:

- (a) Fifty percent in the game and fish protection fund created in section 43553.

(b) Fifty percent in the nongame fish and wildlife trust fund created in section 43902.

(4) In the annual hunting guide available from persons authorized to sell licenses under part 435, the department shall include information on all of the following:

(a) How hunters can distinguish mourning doves from other birds.

(b) Management practices for the propagation of mourning doves.

(c) How mourning dove hunting is conducted ethically, lawfully, and safely.

(d) Special opportunities mourning dove hunting offers to youth, the elderly, and the disabled.

This act is ordered to take immediate effect.

Approved June 18, 2004.

Filed with Secretary of State June 18, 2004.

[No. 161]

(HB 4983)

AN ACT to regulate certain transactions involved in immigration matters and the providing of services in those matters; to set standards and security requirements involving certain immigration matters and persons engaged in immigration matters; to create a list of immigration clerical assistants; to provide for certain powers and duties for certain state agencies; and to provide for remedies and penalties.

The People of the State of Michigan enact:

338.3451 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan immigration clerical assistant act”.

338.3453 Definitions.

Sec. 3. As used in this act:

(a) “Business relationship” means a relationship with any of the following:

(i) An individual serving as a designated school official or principal designated school official as defined by the United States citizenship and immigration services, but only where acting within the scope of authority in that capacity on behalf of the designated educational institution.

(ii) An individual serving as a responsible officer or alternate responsible officer as defined by the United States department of state, but only where acting within the scope of authority in that capacity on behalf of the designated exchange visitor program.

(iii) An individual who is regularly employed by an employer other than a sole proprietorship in a position that requires that employee to process immigration matters on behalf of and as a representative of the employer relative to employment by an employee or prospective employee only with the employer and who receives no compensation, directly or indirectly, from those employees or prospective employees.

(iv) An individual who is employed by a federal or state elected official involved in the processing of a visa application or petition on behalf of or as a representative of a constituent.

(b) “Compensation” means money, donations, property, promise of payment, or anything else of value required in exchange for a person’s services.

(c) “Consumer” means a person who utilizes or seeks to utilize the services of an immigration clerical assistant.

(d) “Department” means the department of labor and economic growth.

(e) “Immigration clerical assistant” means any individual providing or offering to provide services, for compensation, relating to any immigration matter.

(f) “Immigration matter” means any matter affecting the immigrant status, nonimmigrant status, or citizenship status of any individual and includes, but is not limited to, federal or state administrative or court proceedings or the filing of accompanying documents in those proceedings, or both.

(g) “List” means the list of immigration clerical assistants established by the department.

(h) “Services” means any action taken on behalf of any consumer for the benefit of that consumer or another individual regarding the immigrant status, nonimmigrant status, or citizenship status of any consumer or other individual, and includes, but is not limited to, the following:

(i) Transcribing responses onto government agency forms on behalf of a consumer relating to an immigration matter.

(ii) Translating information from a government agency form to a language other than English and translating responses on behalf of a consumer relating to an immigration matter.

(iii) Drafting or completing an application or other paper on behalf of a consumer in an immigration matter.

(iv) Giving advice to a consumer in an immigration matter.

(i) “Solicit” means any contact with a specific consumer by an immigration clerical assistant or his or her agent, representative, or employee regarding the provision of services, for compensation, regarding an immigration matter or the provision of services. Solicit does not include letters or advertising distributed generally to persons not known to need the services of an immigration clerical assistant.

338.3454 Individual providing immigration services or acting as immigration clerical assistant; placement on list required.

Sec. 4. An individual shall not provide services or offer to provide services, or act as an immigration clerical assistant, unless the individual is placed on the list established under this act or unless the individual is exempted under section 5 from placement on the list.

338.3455 Exemptions.

Sec. 5. The following are exempt from this act:

(a) An attorney at law licensed to practice law in any state or territory of the United States and his or her legal and other support staff working under his or her direct supervision.

(b) A law student or law school graduate not yet admitted to the bar who is supervised by an attorney licensed to practice law in any state or territory of the United States.

(c) A reputable individual who has a personal, family, or business relationship with the individual subject to the immigration matter and is engaged in an immigration matter for that individual without compensation.

(d) A nonprofit religious, charitable, social service, or similar organization recognized by the board of immigration appeals, and any individual representing such an organization who has been accredited by the board of immigration appeals.

(e) Any individual representing or acting on behalf of an organization who performs only the following services:

(i) Translating documents from a language other than English into English in an immigration matter.

(ii) Properly notarizing signatures on documents in an immigration matter.

(iii) Referring the consumer to an attorney in an immigration matter.

(iv) Taking or arranging for the taking of photographs or fingerprints in an immigration matter.

(v) Arranging for the performance of medical testing and assisting with the obtaining of such medical examination results in an immigration matter.

(vi) Conducting English language and civics courses for consumers in an immigration matter.

(vii) Conducting educational or experiential evaluations, or combinations of educational and experiential evaluations, for consumers in an immigration matter.

(f) A nonprofit religious, charitable, social service, or similar organization that provides the services listed under subdivision (e) without compensation.

(g) A translation business that meets the following criteria:

(i) Was an active member of the American translators association on September 1, 2001, and abides by and is subject to its code of ethical practices.

(ii) Is incorporated.

(iii) Keeps commercial offices in the state of Michigan.

(iv) Derives 90% of its income from the translation business.

(v) Has sales exceeding \$100,000.00 per year in the translation business.

(vi) Was engaged in the translation business on September 1, 2001.

338.3457 Applicant for placement on list; fee; application form; bond; updating information.

Sec. 7. (1) An immigration clerical assistant shall apply to the department for placement on the list established under section 9.

(2) An applicant for placement on the list shall pay the appropriate fee and submit in written, electronic, or other form acceptable to the department the application that shall include, at a minimum, the name, date of birth, residential and business addresses denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) The applicant shall provide in a manner acceptable to the department the name of the bonding company issuing the bond required under this act and the number or other identifying information regarding the bond.

(4) An immigration clerical assistant placed on the list shall, upon change of any of the information submitted on the application under subsections (2) and (3), update that information and submit it to the department in a manner acceptable to the department within 14 days after the change.

338.3459 Immigration clerical assistant list; creation; establishment; availability; fees for development, maintenance, and administration of list; failure to renew placement resulting in removal; effect.

Sec. 9. (1) There is created an immigration clerical assistant list in the department. Within 180 days after the effective date of this act, the department shall establish the list as a fully functional program complying with the prescriptions of this section.

(2) The list shall be made available electronically or in written form to any member of the general public upon electronic or written request. The list shall include under each individual the individual's name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address.

(3) In order to cover the costs of developing, maintaining, and administering the list, the department shall impose the following fees:

(a) A nonrefundable application fee of \$250.00 for any of the following:

(i) Original placement on the list for a period of 3 years.

(ii) Renewal applications received more than 60 days after the expiration date of placement on the list.

(iii) Application for reactivation of placement on the list that was removed by the department for noncompliance with this act or by an order of a court of competent jurisdiction.

(b) A nonrefundable renewal listing fee for a 3-year period in the amount of \$90.00.

(c) A nonrefundable late fee of \$20.00 for renewals received up to 60 days following the expiration date of placement on the list.

(d) A nonrefundable fee of \$20.00 for changes to a current placement on the list, including, but not limited to, address, name, or bond information.

(4) An individual who fails to renew his or her placement on the list on or before the expiration date may be removed from the list by the department and shall not provide services or act or offer to act as an immigration clerical assistant beyond the expiration date.

(5) An individual who is removed from the list for failure to renew his or her placement on the list or who is otherwise removed from the list by the department for noncompliance with this act or removed by order of a court of competent jurisdiction shall not provide services and shall not act or offer to act as an immigration clerical assistant.

338.3461 Charge for services.

Sec. 11. An immigration clerical assistant may charge the following for services:

(a) Not more than \$20.00 per page for translation of supporting documentation.

(b) Not more than \$10.00 per page to complete a government agency form.

(c) The amount allowed under law for notarial acts.

(d) A reasonable and fair fee for other services that include, but are not limited to, photocopying, mailing, and telephone calls.

338.3463 Contract requirements.

Sec. 13. (1) An immigration clerical assistant shall enter into a written contract with a consumer before any service is rendered and before accepting any compensation.

(2) The contract shall be written in English and shall include a written translation into the primary language understood by the consumer if the consumer is not a native speaker of English. The contract shall embody all the terms and conditions of the agreement to provide services, including, but not limited to, the following:

- (a) The name and address of the immigration clerical assistant.
- (b) The date and time of the transaction.
- (c) A description of the services to be provided and the itemized cost of each service.
- (d) The name and address of the bonding company or other surety that has issued the bond required under section 15.

(3) An immigration clerical assistant shall not orally amend or supplement the written contract and shall not make any statement that contradicts or is inconsistent with the terms of the written contract. A copy of the executed contract shall be provided to the consumer at the time of execution.

(4) The consumer has 72 hours from the execution of the contract to rescind the transaction. A notice of the consumer's right to rescind shall be included in the contract in English and shall be translated with substantially similar meaning into the primary language understood by the consumer in substantially the following form:

“You, the consumer, may cancel this transaction at any time prior to 72 hours following the date and time that this contract is signed by you. You may cancel this transaction, without any penalty or obligation, by writing “CANCEL” across your signature and returning a copy to the immigration clerical assistant or his/her authorized representative.”

(5) Upon rescission of the transaction, an immigration clerical assistant shall promptly return to the person so entitled to it any deposit, down payment, or other compensation received from or on behalf of the consumer and shall return to the consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer in any immigration matter.

(6) The contract shall state in a prominent place, in type not smaller than 12-point font, a notice in English that shall be translated with substantially similar meaning into the primary language understood by the consumer, as follows:

“NOTICE: An immigration clerical assistant is NOT an attorney and is not authorized to provide legal services or offer legal advice of any kind.”

338.3465 Corporate surety or cash bond.

Sec. 15. (1) An immigration clerical assistant shall file and maintain in force a corporate surety or cash bond conditioned upon the faithful and competent provision of services. The bond shall be in a form used by the issuer and acceptable to the department. The bond shall be in the sum of not less than \$50,000.00.

(2) The bond shall be for the benefit of a person damaged by fraud, misstatement, misrepresentation, unlawful act or omission, or failure of the immigration clerical assistant or its agent, representative, or employee to provide services as promised. A person may bring an action upon the bond for damages as described in this subsection. The aggregate liability to all injured persons shall not exceed the sum of the bond.

(3) The surety on the bond shall have the right to cancel or terminate the bond upon giving 30 days' written notice to the person to whom it was issued and to the department and after that date shall be relieved of liability for a breach of condition occurring after the effective date of the cancellation or termination. The failure to give a new bond within

30 days after the notice to the department under this subsection operates as an automatic removal of the immigration clerical assistant's placement on the list. An action on the bond shall not be commenced after the expiration of 1 year after the effective date of the cancellation or termination of the bond.

(4) An immigration clerical assistant shall prominently display in his or her place of business the name of the bond company and the number or other identifying information regarding the bond.

338.3467 Prohibited conduct.

Sec. 17. (1) An immigration clerical assistant shall not do any of the following:

(a) Offer or give legal advice including, but not limited to, selecting the type of application or form to be submitted to a government agency, recommending a procedure to be followed in seeking a benefit under the immigration and nationality act, chapter 477, 66 Stat. 163, 8 USC 1101, et seq., and altering or deleting language on standard immigration forms.

(b) Engage in the unauthorized practice of law as determined by a court of competent jurisdiction.

(c) Represent that the offering or the provision of services is legal advice or legal services.

(d) Falsely represent that the offering or the provision of services is necessary.

(e) Falsely represent that the offering or the provision of services is in response to a request by or on behalf of a consumer.

(f) Represent that the life, safety, or welfare of the consumer and his or her family would be adversely affected if the services of an immigration clerical assistant are not provided.

(g) Fail to reveal a material fact regarding an immigration matter or regarding services, which fact could not be reasonably known to the consumer, the omission of which tends to mislead or deceive the consumer.

(h) Take advantage of a consumer's inability to protect his or her interests when the immigration clerical assistant knows or should reasonably know of a consumer's disability, illiteracy, or inability to understand the language of any documentation or government form.

(i) Regarding services not described in section 11, charge a consumer a price for services that is not reasonable under the circumstances.

(j) Make a false or fraudulent representation of fact or statement material to the services provided.

(k) Fail to reveal facts material to the services provided in light of representations of fact made in a positive manner.

(l) Engage in any method, act, or practice that is unfair or deceptive.

(m) Act as an intermediary between the consumer and the federal government in an immigration matter.

(n) Make any representation orally or in writing that the immigration clerical assistant guarantees or promises a specific immigration benefit or result.

(o) Represent or imply that the immigration clerical assistant will be able to obtain any special influence over, or treatment from, any government entity with respect to an immigration matter.

(p) Make a false statement or representation to the department as part of the application process for initial or renewal placement on the list.

(q) Use a term implying that the individual placed on the list is approved, certified, or licensed by the state of Michigan or the federal government.

(2) An immigration clerical assistant shall not, in any document, advertisement, stationery, letterhead, business card, or other comparable written material describing the role of the immigration clerical assistant, literally translate from English into another language terms or titles including, but not limited to, notary public, notary, licensed, attorney, lawyer, or any other term that implies that the person is an attorney. As used in this subsection, “literally translate” means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

338.3469 Delivery of documents and forms.

Sec. 19. (1) An immigration clerical assistant shall deliver to each consumer a copy of each document or form completed on behalf of a consumer. Each document and form executed or completed shall include the name, residential and business address denoting a specific location other than a post office box, telephone number, facsimile number, and e-mail or website address of the immigration clerical assistant.

(2) An immigration clerical assistant shall retain copies of all documents and forms completed or executed on behalf of a consumer, or the individual upon whose behalf the consumer is acting, for not less than 3 years.

(3) An immigration clerical assistant shall return all original documents of the consumer, or the individual upon whose behalf the consumer is acting, and not keep them in his or her possession.

(4) An immigration clerical assistant shall promptly deliver to each consumer, or the individual upon whose behalf the consumer is acting, all original documents, including notices, letters, approvals, denials, receipts, or other correspondence received on behalf of the consumer, or the individual upon whose behalf the consumer is acting, in any immigration matter. As used in this subsection, “promptly” means either of the following:

(a) In the case of correspondence from the agency of the federal government that requires a response within 30 days after receipt, within 7 days.

(b) In all other cases, within 14 days.

338.3471 Violations; penalties; notice of noncompliance; exemption.

Sec. 21. (1) A person who violates this act is guilty of the following:

(a) In the case of a first conviction, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(b) In the case of a second or subsequent conviction, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$10,000.00, or both.

(2) A person injured by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief or damages, or both. The court shall also grant a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(3) A person who, upon information and belief, claims a violation of this act has been committed by an immigration clerical assistant may bring an action in a court of competent jurisdiction for equitable relief on behalf of the general public. The court shall award a prevailing plaintiff reasonable attorney fees and costs and may order removal from the list for at least 5 years or as otherwise ordered by the court.

(4) The remedies and penalties in this act are cumulative and use of 1 remedy under this act does not bar the use of any remedy allowed under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or the use of any other remedy allowed under law.

(5) Notwithstanding any other provision of this section, a first violation of the list requirement of section 7 or bonding requirement of section 15, or both, shall subject the immigration clerical assistant only to a notice of noncompliance issued by the department. The department shall issue the notice of noncompliance promptly, and the notice of noncompliance shall indicate a time period for compliance not to exceed 90 days. A second or subsequent violation of either or both of the requirements described in this subsection shall subject a person to the other provisions of this section.

(6) Upon notification of any kind to the department of an individual acting as an immigration clerical assistant without being placed on the list, failure to comply with the list requirements, or of the failure to be in compliance with the bonding requirement imposed under section 15, the department shall issue a notice of noncompliance to that individual.

(7) As a precondition to the prosecution of an individual under subsection (1) for failure of an individual acting as an immigration clerical assistant to be placed on the list, failure to comply with the list requirements, or for failure to comply with the bonding requirement under section 15, the complainant shall demonstrate that the department had sent a notice of noncompliance to the person alleged to have violated this act.

(8) An immigration clerical assistant that is acting on behalf of a tax-exempt nonprofit organization under section 501(c)(3) of the internal revenue code of 1986 that applies to and is placed on the list and complies with the bonding requirement of section 15 and the service charge requirements of section 11, or an employee or volunteer of such an organization, is exempt from this section.

Effective date.

Enacting section 1. This act takes effect October 1, 2004.

This act is ordered to take immediate effect.

Approved June 18, 2004.

Filed with Secretary of State June 21, 2004.

[No. 162]

(HB 4984)

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

its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 13p of chapter XVII (MCL 777.13p), as amended by 2002 PA 475.

The People of the State of Michigan enact:

CHAPTER XVII

777.13p Applicability of chapter to certain felonies; MCL 338.823 to 388.962.

Sec. 13p. This chapter applies to the following felonies enumerated in chapters 338 to 399 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
338.823	Pub trst	F	Private detective license act violation	4
338.1053	Pub trst	F	Private security business and security alarm act violation	4
338.3434a(2)	Pub trst	F	Unauthorized disclosure of a social security number — subsequent offense	4
338.3621(1)(b)	Pub trst	G	Michigan immigration clerical assistant act violation — subsequent offense	2
388.936	Pub trst	F	Knowingly making false statement — school district loans	4
388.962	Pub trst	F	Knowingly making false statement — school district loans	4

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4983 of the 92nd Legislature is enacted into law.

Effective date.

Enacting section 2. This amendatory act takes effect October 1, 2004.

This act is ordered to take immediate effect.

Approved June 18, 2004.

Filed with Secretary of State June 21, 2004.

[No. 163]**(HB 5008)**

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date,” by amending sections 226 and 802 (MCL 257.226 and 257.802), as amended by 2003 PA 152.

The People of the State of Michigan enact:

257.226 Expiration of vehicle registration; duties of secretary of state; issuance of registration; tax; validity of certificate of title; special registration; certification; registration of trailer or semi-trailer used for recreational purposes; assignment or reassignment of expiration date under international registration plan; applicability of subsection (11) after October 1, 2003; leased vehicle multiyear registration.

Sec. 226. (1) A vehicle registration issued by the secretary of state expires on the owner’s birthday, unless another expiration date is provided for under this act or unless the registration is for the following vehicles, in which case registration expires on the last day of February:

(a) A commercial vehicle except for a commercial vehicle issued a registration under the international registration plan or a pickup truck or van owned by an individual.

(b) Except for a trailer or semitrailer issued a registration under the international registration plan, a trailer or semitrailer owned by a business, corporation, or person other than an individual; or a pole trailer.

(2) Until February 1, 2005, the expiration date for a registration issued for a motorcycle is March 31. Beginning February 1, 2005, the expiration date for a registration issued for a motorcycle is the motorcycle owner’s birthday.

(3) The expiration date for a registration bearing the letters “SEN” or “REP” is February 1.

(4) In the case of a vehicle owned by a business, corporation, or an owner other than an individual, the secretary of state may assign or reassign the expiration date of the registration.

(5) The secretary of state shall do all of the following:

(a) After the October 1 immediately preceding the year designated on the registration, issue a registration upon application and payment of the proper fee for a commercial

vehicle, other than a pickup or van owned by an individual; or a trailer owned by a business, corporation, or person other than an individual.

(b) Beginning 60 days before the expiration date assigned on an international registration plan registration plate, issue a registration under section 801g upon application and payment of the proper apportioned fee for a commercial vehicle engaged in interstate commerce.

(c) Beginning 45 days before the owner's birthday and 120 days before the expiration date assigned by the secretary of state, issue a registration for a vehicle other than those designated in subsection (1)(a) or (b). However, if an owner whose registration period begins 45 days before his or her birthday will be out of the state during the 45 days immediately preceding expiration of a registration or for other good cause shown cannot apply for a renewal registration within the 45-day period, application for a renewal registration may be made not more than 6 months before expiration.

(6) Except as otherwise provided in this subsection, the secretary of state, upon application and payment of the proper fee, shall issue a registration for a vehicle or a motorcycle to a resident that shall expire on the owner's birthday. If the owner's next birthday is at least 6 months but not more than 12 months in the future, the owner shall receive a registration valid until the owner's next birthday. If the owner's next birthday is less than 6 months in the future, the owner shall receive a registration valid until the owner's birthday following the owner's next birthday. The tax required under this act for a registration described in this subsection shall be either of the following:

(a) For an original registration, the tax shall bear the same relationship to the tax required under section 801 for a 12-month registration as the length of the registration bears to 12 months.

(b) For a renewal of a registration, either of the following:

(i) For a registration that is for at least 6 months but not more than 12 months, the same amount as for 12 months.

(ii) For a renewal of a registration that is for more than 12 months, 2 times the amount for 12 months.

Partial months shall be considered as whole months in the calculation of the required tax and in the determination of the length of time between the application for a registration and the owner's next birthday. The tax required for that registration shall be rounded off to whole dollars as provided in section 801.

(7) A certificate of title shall remain valid until canceled by the secretary of state for cause or upon a transfer of an interest shown on the certificate of title.

(8) The secretary of state, upon request, shall issue special registration for commercial vehicles, valid for 6 months after the date of issue, if the full registration fee exceeds \$50.00, on the payment of 1/2 the full registration fee and a service charge as enumerated in section 802(1).

(9) The secretary of state may issue a special registration for each of the following:

(a) A new vehicle purchased or leased outside of this state and delivered in this state to the purchaser or lessee by the manufacturer of that vehicle for removal to a place outside of this state, if a certification is made that the vehicle will be primarily used, stored, and registered outside of this state and will not be returned to this state by the purchaser or lessee for use or storage.

(b) A vehicle purchased or leased in this state and delivered to the purchaser or lessee by a dealer or by the owner of the vehicle for removal to a place outside of this state, if a

certification is made that the vehicle will be primarily used, stored, and registered outside of this state and will not be returned to this state by the purchaser or lessee for use or storage.

(10) A special registration issued under subsection (9) is valid for not more than 14 days after the date of issuance, and a fee shall be collected for each special registration as provided in section 802(3). The special registration may be in the form determined by the secretary of state. If a dealer makes a retail sale or lease of a vehicle to a purchaser or lessee who is qualified and eligible to obtain a special registration, the dealer shall apply for the special registration for the purchaser or lessee. If a person other than a dealer sells or leases a vehicle to a purchaser or lessee who is qualified and eligible to obtain a special registration, the purchaser or lessee shall appear in person, or by a person exercising the purchaser's or lessee's power of attorney, at an office of the secretary of state and furnish a certification that the person is the bona fide purchaser or lessee or that the person has granted the power of attorney, together with other forms required for the issuance of the special registration and provide the secretary of state with proof that the vehicle is covered by a Michigan no-fault insurance policy issued pursuant to section 3101 of the insurance code of 1956, 1956 PA 218, MCL 500.3101, or proof that the vehicle is covered by a policy of insurance issued by an insurer pursuant to section 3163 of the insurance code of 1956, 1956 PA 218, MCL 500.3163. The certification required in this subsection shall contain all of the following:

(a) The address of the purchaser or lessee.

(b) A statement that the vehicle is purchased or leased for registration outside of this state.

(c) A statement that the vehicle shall be primarily used, stored, and registered outside of this state.

(d) The name of the jurisdiction in which the vehicle is to be registered.

(e) Other information requested by the secretary of state.

(11) Upon request, the secretary of state may issue a registration valid for 6 months after the date of issuance for use on a trailer or semitrailer weighing 1,500 pounds or less and that is used for recreational purposes, upon payment of 1/2 the full registration fee imposed under section 801(1)(l). This subsection does not apply after October 1, 2003.

(12) In the case of a commercial vehicle, trailer, or semitrailer issued a registration under the international registration plan, the secretary of state in mutual agreement with the owner may assign or reassign the expiration date of the registration. However, the expiration date agreed to shall be either March 31, June 30, September 30, or December 31. Renewals expiring on or after September 30, 1993 shall be for a minimum of at least 12 months if there is a change in the established expiration date.

(13) The expiration date for a multiyear registration issued for a leased vehicle shall be the date the lease expires but shall not be for a period longer than 24 months.

257.802 Special registrations; registration of commercial vehicles and motorcycles; temporary registration plates or markers; tax rates, fees, and service charges; disposition.

Sec. 802. (1) For a special registration issued as provided for in section 226(8), there shall be paid 1/2 the tax imposed under section 801 and in addition a service fee of \$10.00.

(2) For all commercial vehicles registered after August 31 for the period expiring the last day of February, a tax of 1/2 the rate otherwise imposed by this act shall be collected.

This subsection does not apply to vehicles registered by manufacturers or dealers under sections 244 to 247.

(3) For each special registration as provided for in section 226(9), a service fee of \$10.00 shall be collected.

(4) For temporary registration plates or markers as provided for in section 226a(1), a service fee of \$5.00 for each group of 5 of those temporary registration plates or markers shall be collected.

(5) For a temporary registration as provided in section 226b, the fee shall be either of the following:

(a) For a 30-day temporary registration, 1/10 of the fee prescribed under section 801 or \$20.00, whichever is greater, and an additional \$10.00 service fee.

(b) For a 60-day temporary registration, 1/5 of the fee prescribed under section 801 or \$40.00, whichever is greater, and an additional \$10.00 service fee.

(6) For registration plates as provided for in section 226a(5), (6), and (7), a service fee of \$40.00 for 2 registration plates and \$20.00 for each additional registration plate shall be collected.

(7) For special registrations issued for special mobile equipment as provided in section 216(d), a service fee of \$15.00 each for the first 3 special registrations, and \$5.00 for each special registration issued in excess of the first 3 shall be collected.

(8) The secretary of state, upon request, may issue a registration valid for 3 months for use on a vehicle with an elected gross weight of 24,000 pounds or greater on the payment of 1/4 the full registration fee provided in section 801(1)(k) and in addition a service fee of \$10.00.

(9) Upon application to the secretary of state, an owner of a truck, truck tractor, or road tractor that is used exclusively for the purpose of gratuitously transporting farm crops or livestock bedding between the field where produced and the place of storage, feed from on-farm storage to an on-farm feeding site, or fertilizer, seed, or spray material from the farm location to the field may obtain a special registration. The service fee for each special registration shall be \$20.00. The special registration shall be valid for a period of up to 12 months and shall expire on December 31. As used in this subsection:

(a) “Feed” means hay or silage.

(b) “Livestock bedding” means straw, sawdust, or sand.

(10) The secretary of state, upon request, may issue a special registration valid for 3 or more months for a road tractor, truck, or truck tractor owned by a farmer, if the motor vehicle is used exclusively in connection with the farmer’s farming operations or for the transportation of the farmer and the farmer’s family and not used for hire. The fee for the registration shall be 1/10 of the fee provided in section 801(1)(c) times the number of months for which the special registration is requested and, in addition, a service fee of \$10.00. No special registration shall be issued for a motor vehicle for which the fee under section 801(1)(c) would be less than \$50.00.

(11) The secretary of state, upon request, may issue a registration valid for 3 months or more for use on a vehicle with an elected gross weight of 24,000 pounds or greater. The fee for the registration shall be 1/12 of the fee provided in section 801(1)(k), times the number of months for which the special registration is requested and, in addition, a service fee of \$10.00.

(12) The service fees collected under subsections (1), (3), (4), (5), (6), (7), (8), (9), (10), and (11) shall be deposited in the transportation administration collection fund created in section 810b.

This act is ordered to take immediate effect.

Approved June 23, 2004.

Filed with Secretary of State June 23, 2004.

[No. 164]

(HB 5632)

AN ACT to amend 1993 PA 327, entitled “An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts,” by amending sections 7 and 12 (MCL 205.427 and 205.432), as amended by 2002 PA 503.

The People of the State of Michigan enact:

205.427 Levy of tax on sale of tobacco products; filing return; payment of tax; inventory; importation or acquisition of tobacco product; tax abatement or refund; reimbursement by adding to price of tobacco product; sale or transfer of unaffixed stamps by wholesaler or unclassified acquirer; prohibition; return or exchange of unaffixed stamps; inspection; reports.

Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the sale of tobacco products sold in this state as follows:

(a) Through July 31, 2002, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 16% of the wholesale price.

(b) For cigarettes, 37.5 mills per cigarette.

(c) Beginning August 1, 2002, for cigarettes, in addition to the tax levied in subdivision (b), an additional 15 mills per cigarette.

(d) Beginning August 1, 2002, for cigarettes, in addition to the tax levied in subdivisions (b) and (c), an additional 10 mills per cigarette.

(e) Beginning July 1, 2004, for cigarettes, in addition to the tax levied in subdivisions (b), (c), and (d), an additional 37.5 mills per cigarette.

(f) Beginning August 1, 2002 and through June 30, 2004, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of the wholesale price.

(g) Beginning July 1, 2004, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 32% of the wholesale price.

(2) On or before the twentieth day of each calendar month, every licensee under section 3 other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator shall file a return with the department stating the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month. The return shall also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month. Wholesalers shall also report accurate inventories of cigarettes, both stamped and unstamped at the end of the preceding calendar month. Wholesalers and unclassified acquirers shall also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. The return shall be signed under penalty of perjury. The return shall be on a form prescribed by the department and shall contain or be accompanied by any further information the department requires.

(3) To cover the cost of expenses incurred in the administration of this act, at the time of the filing of the return, the licensee shall pay to the department the tax levied in subsection (1) for tobacco products sold during the calendar month covered by the return, less compensation equal to both of the following:

(a) One percent of the total amount of the tax due on tobacco products sold other than cigarettes.

(b) Through July 31, 2002, 1.25% of the total amount of the tax due on cigarettes sold.

(c) Beginning August 1, 2002, 1.5% of the total amount of the tax due on cigarettes sold.

(4) Every licensee and retailer who, on August 1, 2002, has on hand for sale any cigarettes upon which a tax has been paid pursuant to subsection (1)(b) shall file a complete inventory of those cigarettes before September 1, 2002 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(b), (c), and (d) and the tax that has been paid under subsection (1)(b). Every licensee and retailer who, on August 1, 2002, has on hand for sale any cigars, noncigarette smoking tobacco, or smokeless tobacco upon which a tax has been paid pursuant to subsection (1)(a) shall file a complete inventory of those cigars, noncigarette smoking tobacco, and smokeless tobacco before September 1, 2002 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(f) and the tax that has been paid under subsection (1)(a).

(5) Every licensee and retailer who, on July 1, 2004, has on hand for sale any cigarettes upon which a tax has been paid pursuant to subsection (1)(b), (c), and (d) shall file a complete inventory of those cigarettes before August 1, 2004 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(b), (c), (d), and (e) and the tax that has been paid under subsection (1)(b), (c), and (d). Every licensee and retailer who, on July 1, 2004, has on hand for sale any cigars, noncigarette smoking tobacco, or smokeless tobacco upon which a tax has been paid pursuant to subsection (1)(f) shall file a complete inventory of those cigars, noncigarette smoking tobacco, and smokeless tobacco before August 1, 2004 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(g) and the tax that has been paid under subsection (1)(f). The proceeds derived under this subsection shall be credited to the medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(6) The department may require the payment of the tax imposed by this act upon the importation or acquisition of a tobacco product. A tobacco product for which the tax under this act has once been imposed and that has not been refunded if paid is not subject upon a subsequent sale to the tax imposed by this act.

(7) An abatement or refund of the tax provided by this act may be made by the department for causes the department considers expedient. The department shall certify the amount and the state treasurer shall pay that amount out of the proceeds of the tax.

(8) A person liable for the tax may reimburse itself by adding to the price of the tobacco products an amount equal to the tax levied under this act.

(9) A wholesaler, unclassified acquirer, or other person shall not sell or transfer any unaffixed stamps acquired by the wholesaler or unclassified acquirer from the department. A wholesaler or unclassified acquirer who has any unaffixed stamps on hand at the time its license is revoked or expires, or at the time it discontinues the business of selling cigarettes, shall return those stamps to the department. The department shall refund the value of the stamps, less the appropriate discount paid.

(10) If the wholesaler or unclassified acquirer has unsalable packs returned from a retailer, secondary wholesaler, vending machine operator, wholesaler, or unclassified acquirer with stamps affixed, the department shall refund the amount of the tax less the appropriate discount paid. If the wholesaler or unclassified acquirer has unaffixed unsalable stamps, the department shall exchange with the wholesaler or unclassified acquirer new stamps in the same quantity as the unaffixed unsalable stamps. An application for refund of the tax shall be filed on a form prescribed by the department for that purpose, within 4 years from the date the stamps were originally acquired from the department. A wholesaler or unclassified acquirer shall make available for inspection by the department the unused or spoiled stamps and the stamps affixed to unsalable individual packages of cigarettes. The department may, at its own discretion, witness and certify the destruction of the unused or spoiled stamps and unsalable individual packages of cigarettes that are not returnable to the manufacturer. The wholesaler or unclassified acquirer shall provide certification from the manufacturer for any unsalable individual packages of cigarettes that are returned to the manufacturer.

(11) On or before the twentieth of each month, each manufacturer shall file a report with the department listing all sales of tobacco products to wholesalers and unclassified acquirers during the preceding calendar month and any other information the department finds necessary for the administration of this act. This report shall be in the form and manner specified by the department.

(12) Each wholesaler or unclassified acquirer shall submit to the department an unstamped cigarette sales report on or before the twentieth day of each month covering the sale, delivery, or distribution of unstamped cigarettes during the preceding calendar month to points outside of Michigan. A separate schedule shall be filed for each state, country, or province into which shipments are made. For purposes of the report described in this subsection, "unstamped cigarettes" means individual packages of cigarettes that do not bear a Michigan stamp. The department may provide the information contained in this report to a proper officer of another state, country, or province reciprocating in this privilege.

205.432 Disposition of proceeds from taxes, fees, and penalties.

Sec. 12. (1) The proceeds derived from the payment of taxes, fees, and penalties provided for under this act and the license fees received by the department shall be

deposited with the state treasurer and disbursed only as provided in this section and section 7(5).

(2) The tax imposed under section 7(1)(a) shall be disbursed as follows:

(a) 94% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(b) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of community health to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(3) The tax imposed on cigarettes under section 7(1)(b) shall be disbursed as follows:

(a) Beginning May 1, 1994 and through June 30, 2004, 5.3% of the proceeds shall be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(b) Beginning July 1, 2004, 6.5% of the proceeds shall be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(c) Through June 30, 2004, 25.3% of the proceeds shall be credited to the general fund of this state.

(d) Beginning July 1, 2004, 24.1% of the proceeds shall be credited to the general fund of this state.

(e) 63.4% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(f) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of community health to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(4) Beginning August 1, 2002, the tax imposed on cigarettes under section 7(1)(c) shall be disbursed as follows:

(a) Through June 30, 2004, 74.2%, and beginning July 1, 2004, 9.0% of the proceeds shall be credited to the general fund of this state.

(b) Through June 30, 2004, 4.6%, and beginning July 1, 2004, 56.3% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(c) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of community health to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(d) Through June 30, 2004, 3.0%, and beginning July 1, 2004, 3.7% of the proceeds shall be paid to counties with a 2000 population of more than 2,000,000, to be used only for indigent health care.

(e) Through June 30, 2004, 12.2%, and beginning July 1, 2004, 25.0% of the proceeds shall be credited to the medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(5) Beginning August 1, 2002, the tax imposed under section 7(1)(f) shall be disbursed as follows:

(a) 75.6% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(b) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of community health to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(c) 18.4% of the proceeds shall be credited to the general fund of this state.

(6) Beginning August 1, 2002, the tax imposed on cigarettes under section 7(1)(d) shall be disbursed as follows:

(a) 94.0% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(b) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of community health to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(7) Beginning July 1, 2004, the tax imposed on cigarettes under section 7(1)(e) shall be disbursed as follows:

(a) Beginning July 1, 2004 and through September 30, 2005, 100% of the proceeds shall be credited to the Michigan medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(b) Beginning October 1, 2005, 75.0% of the proceeds shall be credited to the medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(c) Beginning October 1, 2005, 25.0% of the proceeds shall be credited to the general fund of this state.

(8) Beginning July 1, 2004, the tax imposed under section 7(1)(g) shall be disbursed as follows:

(a) Beginning July 1, 2004 and through September 30, 2005, 100% of the proceeds shall be credited to the Michigan medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(b) Beginning October 1, 2005, 75.0% of the proceeds shall be credited to the medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(c) Beginning October 1, 2005, 25.0% of the proceeds shall be credited to the general fund of this state.

(9) The proceeds of the fees and penalties provided for in this act shall be used for the administration of this act.

This act is ordered to take immediate effect.

Approved June 24, 2004.

Filed with Secretary of State June 24, 2004.

[No. 165]**(SB 943)**

AN ACT to amend 1976 PA 451, entitled “An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts,” by amending sections 1169 and 1507 (MCL 380.1169 and 380.1507), as amended by 1993 PA 335, and by adding section 1507b.

The People of the State of Michigan enact:

380.1169 Dangerous communicable diseases; human immunodeficiency virus infection and acquired immunodeficiency virus infection; teacher training; teaching materials; curricula; teaching of abstinence from sex.

Sec. 1169. (1) The principal modes by which dangerous communicable diseases, including, but not limited to, human immunodeficiency virus infection and acquired immunodeficiency syndrome, are spread and the best methods for the restriction and prevention of these diseases shall be taught in every public school in this state. Subject to subsection (3) and section 1507b, the teaching under this section shall stress that abstinence from sex is a responsible and effective method for restriction and prevention of these diseases and is a positive lifestyle for unmarried young people.

(2) Except for licensed health care professionals who have received training on human immunodeficiency virus infection and acquired immunodeficiency syndrome, each person who teaches K to 12 pupils about human immunodeficiency virus infection and acquired immunodeficiency syndrome pursuant to subsection (1) shall have training in human immunodeficiency virus infection and acquired immunodeficiency syndrome education for young people. The superintendent of public instruction, in cooperation with the department of public health, shall train trainers to provide the teacher training required by this subsection and shall provide for the development and distribution to school districts of medically accurate material on the teaching of human immunodeficiency virus infection and acquired immunodeficiency syndrome to young people.

(3) The choice of curricula to be used for human immunodeficiency virus infection and acquired immunodeficiency syndrome education required to be taught under subsection (1) shall be approved by the appropriate school board and implemented in the school setting not later than October 1, 1990. Before adopting any revisions to the curriculum implemented under this section, including, but not limited to, revisions to provide for the teaching of abstinence from sex as a responsible method for restriction and prevention of disease, a school board shall hold at least 2 public hearings on the proposed revisions. The hearings

shall be held at least 1 week apart and public notice of the hearings shall be given in the manner required under section 1201 for board meetings. A public hearing held pursuant to this section may be held in conjunction with a public hearing held pursuant to section 1507.

380.1507 Instruction in sex education; instructors, facilities, and equipment; stressing abstinence from sex; elective class; notice to parent or guardian; request to excuse pupil from attendance; qualifications of teacher; sex education advisory board; public hearing; distribution of family planning drug or device prohibited; "family planning", "class", and "course" defined.

Sec. 1507. (1) The board of a school district may engage qualified instructors and provide facilities and equipment for instruction in sex education, including family planning, human sexuality, and the emotional, physical, psychological, hygienic, economic, and social aspects of family life. Instruction may also include the subjects of reproductive health and the recognition, prevention, and treatment of sexually transmitted disease. Subject to subsection (7) and section 1507b, the instruction described in this subsection shall stress that abstinence from sex is a responsible and effective method of preventing unplanned or out-of-wedlock pregnancy and sexually transmitted disease and is a positive lifestyle for unmarried young people.

(2) The class described in subsection (1) shall be elective and not a requirement for graduation.

(3) A pupil shall not be enrolled in a class in which the subjects of family planning or reproductive health are discussed unless the pupil's parent or guardian is notified in advance of the course and the content of the course, is given a prior opportunity to review the materials to be used in the course and is notified in advance of his or her right to have the pupil excused from the class. The state board shall determine the form and content of the notice required in this subsection.

(4) Upon the written request of a pupil or the pupil's parent or legal guardian, a pupil shall be excused, without penalty or loss of academic credit, from attending a class described in subsection (1).

(5) A school district that provides a class as permitted by subsection (1) shall offer the instruction by teachers qualified to teach health education. A school district shall not offer this instruction unless a sex education advisory board is established by the board of the school district. The board of a school district shall determine terms of service for the sex education advisory board, the number of members to serve on the advisory board, and a membership selection process that reasonably reflects the school district population, and shall appoint 2 co-chairs for the advisory board, at least 1 of whom is a parent of a child attending a school operated by the school district. At least 1/2 of the members of the sex education advisory board shall be parents who have a child attending a school operated by the school district, and a majority of these parent members shall be individuals who are not employed by a school district. The board of a school district shall include pupils of the school district, educators, local clergy, and community health professionals on the sex education advisory board. Written or electronic notice of a sex education advisory board meeting shall be sent to each member at least 2 weeks before the date of the meeting. The advisory board shall do all of the following:

(a) Establish program goals and objectives for pupil knowledge and skills that are likely to reduce the rates of sex, pregnancy, and sexually transmitted diseases. This subdivision does not prohibit a school district from establishing additional program goals and objectives that are not contrary to this section, section 1169, or section 1507b.

(b) Review the materials and methods of instruction used and make recommendations to the board of the school district for implementation. The advisory board shall take into consideration the school district's needs, demographics, and trends, including, but not limited to, teenage pregnancy rates, sexually transmitted disease rates, and incidents of student sexual violence and harassment.

(c) At least once every 2 years, evaluate, measure, and report the attainment of program goals and objectives established under subdivision (a). The board of a school district shall make the resulting report available to parents in the school district.

(6) Before adopting any revisions in the materials or methods used in instruction under this section, including, but not limited to, revisions to provide for the teaching of abstinence from sex as a method of preventing unplanned or out-of-wedlock pregnancy and sexually transmitted disease, the board of a school district shall hold at least 2 public hearings on the proposed revisions. The hearings shall be held at least 1 week apart and public notice of the hearings shall be given in the manner required under section 1201 for board meetings. A public hearing held pursuant to this section may be held in conjunction with a public hearing held pursuant to section 1169.

(7) A person shall not dispense or otherwise distribute in a public school or on public school property a family planning drug or device.

(8) As used in this section, "family planning" means the use of a range of methods of fertility regulation to help individuals or couples avoid unplanned pregnancies; bring about wanted births; regulate the intervals between pregnancies; and plan the time at which births occur in relation to the age of parents. It may include the study of fetology. It may include marital and genetic information. Clinical abortion shall not be considered a method of family planning, nor shall abortion be taught as a method of reproductive health.

(9) As used in this section and sections 1506 and 1507a:

(a) "Class" means an instructional period of limited duration within a course of instruction and includes an assembly or small group presentation.

(b) "Course" means a series of classes linked by a common subject matter.

380.1507b Sex education and instruction; curriculum requirements.

Sec. 1507b. (1) Instruction under section 1507 in sex education and instruction under section 1169 on human immunodeficiency virus infection and acquired immunodeficiency syndrome shall emphasize that abstinence from sex is a positive lifestyle for unmarried young people because abstinence is the only protection that is 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted human immunodeficiency virus infection and acquired immunodeficiency syndrome.

(2) Material and instruction in the sex education curriculum under section 1507 that discusses sex shall be age-appropriate, shall not be medically inaccurate, and shall do at least all of the following:

(a) Discuss the benefits of abstaining from sex until marriage and the benefits of ceasing sex if a pupil is sexually active.

(b) Include a discussion of the possible emotional, economic, and legal consequences of sex.

(c) Stress that unplanned pregnancy and sexually transmitted diseases are serious possibilities of sex that are not fully preventable except by abstinence.

(d) Advise pupils of the laws pertaining to their responsibility as parents to children born in and out of wedlock.

(e) Ensure that pupils are not taught in a way that condones the violation of the laws of this state pertaining to sexual activity, including, but not limited to, sections 158, 335a, 338, 338a, 338b, and 520b to 520e of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.335a, 750.338, 750.338a, 750.338b, and 750.520b to 750.520e.

(f) Teach pupils how to say “no” to sexual advances and that it is wrong to take advantage of, harass, or exploit another person sexually.

(g) Teach refusal skills and encourage pupils to resist pressure to engage in risky behavior.

(h) Teach that the pupil has the power to control personal behavior. Pupils shall be taught to base their actions on reasoning, self-discipline, a sense of responsibility, self-control, and ethical considerations such as respect for self and others.

(i) Provide instruction on healthy dating relationships and on how to set limits and recognize a dangerous environment.

(j) Provide information for pupils about how young parents can learn more about adoption services and about the provisions of the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20.

(k) Include information clearly informing pupils that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment and that 1 of the other results of being convicted of this crime is to be listed on the sex offender registry on the internet for up to 25 years.

(3) This section does not prohibit a public school from offering sex education with behavioral risk reduction strategies, as defined by law, that are not 100% effective against unplanned pregnancy, sexually transmitted disease, and sexually transmitted human immunodeficiency virus infection and acquired immunodeficiency syndrome.

This act is ordered to take immediate effect.

Approved June 24, 2004.

Filed with Secretary of State June 24, 2004.

[No. 166]

(HB 5478)

AN ACT to amend 1979 PA 94, entitled “An act to make appropriations to aid in the support of the public schools and the intermediate school districts of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to supplement the school aid fund by the levy and collection of certain taxes; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts,” by amending section 166a (MCL 388.1766a), as amended by 2003 PA 158.

The People of the State of Michigan enact:

388.1766a Instruction in reproductive health or other sex education; complaint process.

Sec. 166a. (1) In order to avoid forfeiture of state aid under subsection (2), the board of a district or intermediate district providing reproductive health or other sex education

instruction under section 1169, 1506, or 1507 of the revised school code, MCL 380.1169, 380.1506, and 380.1507, or under any other provision of law, shall ensure that all of the following are met:

(a) That the district or intermediate district does not provide any of the instruction to a pupil who is less than 18 years of age unless the district or intermediate district notifies the pupil's parent or legal guardian in advance of the instruction and the content of the instruction, gives the pupil's parent or legal guardian a prior opportunity to review the materials to be used in the instruction, allows the pupil's parent or legal guardian to observe the instruction, and notifies the pupil's parent or legal guardian in advance of his or her rights to observe the instruction and to have the pupil excused from the instruction.

(b) That, upon the written request of a pupil's parent or legal guardian or of a pupil if the pupil is at least age 18, the pupil shall be excused, without penalty or loss of academic credit, from attending class sessions in which the instruction is provided.

(c) That the sex education instruction includes age-appropriate information clearly informing pupils at 1 or more age-appropriate grade levels that having sex or sexual contact with an individual under the age of 16 is a crime punishable by imprisonment, and that 1 of the other results of being convicted of this crime is to be listed on the sex offender registry on the internet for up to 25 years.

(2) If a parent or legal guardian of a pupil enrolled in a district or intermediate district believes that the district or intermediate district has violated this section or section 1169, 1506, or 1507 of the revised school code, MCL 380.1169, 380.1506, and 380.1507, he or she may file a complaint with the superintendent or chief administrator of the district or intermediate district in which the pupil is enrolled. Upon receipt of the complaint, the superintendent or chief administrator of the district or intermediate district shall investigate the complaint and, within 30 days after the date of the complaint, provide a written report of his or her findings to the parent or legal guardian who filed the complaint and to the superintendent of public instruction. If the investigation reveals that 1 or more violations have occurred, the written report shall contain a description of each violation and of corrective action the district or intermediate district will take to correct the situation to ensure that there is no further violation. The district or intermediate district shall take the corrective action described in the written report within 30 days after the date of the written report.

(3) If a parent who has filed a complaint with a district under subsection (2) believes that the district is still not in compliance with law based on the findings made by the superintendent or chief administrator of the district, the parent may appeal the findings to the intermediate district in which the district is located. If there is an appeal to an intermediate district under this subsection, the intermediate superintendent of the intermediate district shall investigate the complaint and, within 30 days after the date of the appeal, provide a written report of his or her findings to the parent or legal guardian who filed the appeal and to the superintendent of public instruction. If the investigation by the intermediate superintendent reveals that 1 or more violations have occurred, the intermediate superintendent in consultation with the local district shall develop a plan for corrective action for the district to take to correct the situation to ensure that there is no further violation, and shall include this plan for corrective action with the written report provided to the parent or legal guardian and the superintendent of public instruction. The district shall take the corrective action described in the plan within 30 days after the date of the written report.

(4) If a parent who has filed a complaint with an intermediate district under subsection (2) or a parent who has filed an appeal with an intermediate district under subsection (3)