

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than his home state:

- (i) Is required to post collateral or a bond to secure appearance for a trial at a later date; or
- (ii) Is taken into custody until the collateral or bond is posted; or
- (iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices set forth in paragraph (7) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation.

(10) The practices described in paragraph (7) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(11) The enforcement practices described in paragraph (7) of this article consume an undue amount of law enforcement time.

(b) It is the policy of the participating states to:

(1) Promote compliance with the state statutes, state laws, state ordinances, state regulations, and state administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state.

(3) Allow a violator, except as provided in paragraph (b) of article III, to accept a wildlife citation and, without delay, proceed on his way, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in paragraph (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

## ARTICLE II

### DEFINITIONS

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(d) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, state law, state regulation, state ordinance, or state administrative rule, and such conviction shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by state statute, state law, state regulation, state ordinance, or state administrative rule of a participating state.

(i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(m) “Suspension” means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) “Terms of the citation” means those conditions and options expressly stated upon the citation.

(o) “Wildlife” means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as “wildlife” and are protected or otherwise regulated by state statute, state law, state regulation, state ordinance, or state administrative rule in a participating state. Species included in the definition of “wildlife” vary from state to state and determination of whether a species is “wildlife” for the purposes of this compact shall be based on state law.

(p) “Wildlife law” means any state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(q) “Wildlife officer” means any individual authorized by a participating state to issue a citation for a wildlife violation.

(r) “Wildlife violation” means any cited violation of a state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

### ARTICLE III

#### PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in paragraph (b) of this article, if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(b) Personal recognizance is acceptable (1) if not prohibited by state law or the compact manual and (2) if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance pursuant to paragraph (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and with the content as prescribed in the compact manual.

### ARTICLE IV

#### PROCEDURE FOR HOME STATE

(a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of

the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

## ARTICLE V

### RECIPROCAL RECOGNITION OF SUSPENSION

(a) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and would have been the basis for a mandatory suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in the form and with the content as contained in the compact manual.

## ARTICLE VI

### APPLICABILITY OF OTHER LAWS

(a) Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

## ARTICLE VII

### COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of 1 representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to 1 vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(c) The board shall elect annually from its membership a chairman and vice-chairman.

(d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize and dispose of the donations and grants.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private non-profit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

## ARTICLE VIII

### ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective at such time as it is adopted in a substantially similar form by 2 or more states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.

(2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) A citation of the authority from which the state is empowered to become a party to this compact;

(ii) An agreement of compliance with the terms and provisions of this compact; and

(iii) An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(3) The effective date of entry shall be specified by the applying state but shall not be less than 60 days after notice has been given, (a) by the chairman of the board of the compact administrators or (b) by the secretariat of the board to each participating state, that the resolution from the applying state has been received.

(c) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

## ARTICLE IX

### AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a participating state to respond to the compact chairman within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

## ARTICLE X

### CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact is held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

## ARTICLE XI

### TITLE

This compact shall be known as the “wildlife violator compact”.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

---

### **[No. 236]**

### **(HB 5931)**

AN ACT to amend 1956 PA 218, entitled “An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified

tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 834 and 4060 (MCL 500.834 and 500.4060), section 834 as amended by 2000 PA 378 and section 4060 as amended by 1993 PA 349, and by adding section 838.

*The People of the State of Michigan enact:*

**500.834 Valuation of life insurance policies and contracts issued on and after operative date of standard nonforfeiture law; minimum standard; reserves.**

Sec. 834. (1) Except as otherwise provided in sections 835, 836, and 837, the minimum standard for the valuation of policies and contracts described in subsection (8) shall be the commissioner's reserve valuation methods defined in subsections (2), (3), and (6), 5% interest for group annuity and pure endowment contracts, provided that prior notice of any revaluation of reserves with respect to group annuity and pure endowment contracts is given to the commissioner in the same manner as is required before a revaluation of reserves under section 832(2), and 3-1/2% interest for all other of those policies and contracts; or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after October 21, 1974, 4% interest for those policies issued before October 1, 1980, and 4-1/2% interest for those policies issued on or after October 1, 1980, or in the case of life insurance contracts, other than annuity and pure endowment contracts, issued after December 31, 1994, 5-1/2% interest for single premium life insurance policies and 4-1/2% interest for all other policies, and the following tables:

(I) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in those policies: the commissioner's 1941 standard ordinary mortality table, for policies issued before the operative date of paragraph 5 of section 4060(5); and the commissioner's 1958 standard ordinary mortality table for policies issued on or after that operative date and before the operative date of paragraphs 9 to 19 of section 4060(5). For any category of those policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured; and, for those policies issued on or after the operative date of paragraphs 9 to 19 of section 4060(5), the

commissioner's 1980 standard ordinary mortality table or, at the election of the company for any 1 or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors or any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for those policies or the 2001 CSO mortality table under section 838.

(II) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in those policies: the 1941 standard industrial mortality table for those policies issued before the operative date of paragraph 7 of section 4060(5); and for those policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for those policies.

(III) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in those policies: the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of those tables approved by the commissioner.

(IV) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in those policies: the group annuity mortality table for 1951, any modification of that table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(V) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961, and before January 1, 1966, either those tables or, at the option of the company, the class (3) disability table, 1926; and for policies issued before January 1, 1961, the class (3) disability table, 1926. For active lives, a table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(VI) For accidental death benefits in or supplementary to policies: for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by a rule promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies issued on or after January 1, 1961, and before January 1, 1966, 1 of the above tables or at the option of the insurer the intercompany double indemnity mortality table. A table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(VII) For group life insurance, life insurance issued on the substandard basis, and other special benefits: any table approved by the commissioner.

(2) Except as otherwise provided in subsections (3) and (6), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of

uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies over the then present value of any future modified net premiums for the policies. The modified net premiums for the policy shall be a uniform percentage of the respective contract premiums for the future guaranteed benefits so that the present value of all modified net premiums equals, at the date of issue of the policy, the sum of the then present value of these benefits provided for by the policy and the excess of (g) over (h), as follows:

(g) A net level annual premium equal to the present value, at the date of issue, of the future guaranteed benefits provided for after the first policy year divided by the present value, at the date of issue, of an annuity of 1 per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of the policy.

(h) A net 1-year term premium for the future guaranteed benefits provided for in the first policy year.

However, for any life insurance policy issued on or after January 1, 1986 for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for that excess and that provides an endowment benefit or a cash surrender value or a combination of endowment benefit and cash surrender value in an amount greater than the excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, defined as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, shall be, except as otherwise provided in subsection (6), the greater of the reserve as of that policy anniversary calculated as described in paragraph 1 of this subsection and the reserve as of that policy anniversary calculated as described in that paragraph, but with the value defined in (g) being reduced by 15% of the amount of the excess first year premium; all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; the policy being assumed to mature on that date as an endowment; and the cash surrender value provided on that date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsection (1) and section 836 shall be used.

Reserves according to the commissioner's reserve valuation method for (I) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (II) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, 26 USC 408, (III) disability and accidental death benefits in all policies and contracts, and (IV) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this subsection.

(3) This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under

section 408 of the internal revenue code, 26 USC 408. Without action by the Michigan Legislature to adopt actuarial guideline 35, reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of that respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate specified in those contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(4) An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, shall not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (2), (3), (6), and (7), and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies. The aggregate reserves for all policies, contracts, and benefits shall not be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 830a.

(5) Reserves for all policies and contracts issued prior to June 27, 1994 may be calculated, at the option of the insurer, according to any standards that produce greater aggregate reserves for all those policies and contracts than the minimum reserves required by the laws in effect immediately before June 27, 1994. Reserves for a category of policies, contracts, or benefits as established by the commissioner, issued on or after June 27, 1994, may be calculated at the option of the insurer according to any standards that produce greater aggregate reserves than those calculated according to the minimum standard provided in this act. However, the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for in those policies and contracts. Any insurer that had previously adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section and section 835 may, with the commissioner's approval, adopt any lower standard of valuation, but not lower than the minimum standard provided by this section and section 835. However, for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by section 830a shall not be considered to be the adoption of a higher standard of valuation.

(6) If in any contract year the gross premium charged by a life insurer on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve on the policy or contract, the insurer may use the minimum valuation standards of mortality, either at the time of issue or the time of valuation of the policy or contract and the minimum valuation rate of interest at time of issue or the time of valuation of the policy or contract, so long as the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of

mortality and rate of interest referred to in this subsection are those standards stated in subsection (1) and section 836. However, for any life insurance policy issued on or after January 1, 1986 for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for that excess and that provides an endowment benefit or a cash surrender value or a combination of endowment benefit and cash surrender value in an amount greater than the excess premium, the provisions of this subsection shall be applied as if the method actually used in calculating the reserve for that policy were the method described in subsection (2), ignoring paragraph 2 of that subsection. The minimum reserve at each policy anniversary of that policy shall be the greater of the minimum reserve calculated in accordance with subsection (2), including paragraph 2 of that subsection, and the minimum reserve calculated in accordance with this subsection.

(7) For any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or, in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (2), (3), and (6), the reserves that are held under those plans must be appropriate in relation to the benefits and the pattern of premiums for that plan and computed by a method that is consistent with the principles of this standard valuation law, as determined by rules promulgated by the commissioner.

(8) This section applies to only life insurance policies and contracts issued on and after the operative date of section 4060, the standard nonforfeiture law, except as otherwise provided in sections 835 and 836 for group annuity and pure endowment contracts issued on or after the operative date of section 4060 and except as otherwise provided in section 837 for universal life contracts.

**500.838 Definitions; use of NAIC accounting practices and procedures manual; mortality table; separate rates for smokers and non-smokers; determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits; actuarial opinion; application of accounting practices and procedural manual; rates and charges based on gender; blended tables; basis as sex-distinct and sex-neutral.**

Sec. 838. (1) As used in this section:

(a) “2001 CSO mortality table” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American academy of actuaries CSO task force from the valuation basic mortality table developed by the society of actuaries individual life insurance valuation mortality task force and adopted by the NAIC in December 2002. Unless the context indicates otherwise, the 2001 CSO mortality table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(b) “2001 CSO mortality table (F)” means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO mortality table.

(c) “2001 CSO mortality table (M)” means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO mortality table.

(d) “Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(e) “NAIC” means the national association of insurance commissioners.

(f) “Smoker and nonsmoker mortality tables” means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) In addition to the other requirements of this act, a life insurer shall use appendix A-830 of the NAIC accounting practices and procedures manual for the valuation of life insurance policies. Any supplements, replacements, or changes to appendix A-830 of the NAIC accounting practices and procedures manual that are adopted by the NAIC shall only take effect if adopted by the commissioner by rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. This section does not expand the applicability of appendix A-830 of the NAIC accounting practices and procedures manual to include life insurance policies otherwise exempt under appendix A-830 of the NAIC accounting practices and procedures manual.

(3) At the election of an insurer for each plan of insurance and subject to this section, the 2001 CSO mortality table may be used as the minimum standard for policies issued on or after July 1, 2004 and before January 1, 2009 to which sections 834(1)(I) and 4060(5)(f) are applicable. If an insurer elects to use the 2001 CSO mortality table, it shall do so for both valuation and nonforfeiture purposes. Subject to this section, the 2001 CSO mortality table shall be used in determining minimum standards for policies issued on or after January 1, 2009 to which sections 834(1)(I) and 4060(5)(f) are applicable.

(4) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used. For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may use any of the following:

(a) Composite mortality tables to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(b) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by section 834 and composite mortality tables to determine the basic minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(c) Smoker and nonsmoker mortality tables to determine minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits.

(5) An insurer may, at the option of the insurer for each plan of insurance, use the 2001 CSO mortality table in its ultimate or select and ultimate form for the purpose of determining minimum reserve liabilities, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits for each plan of insurance.

(6) If the 2001 CSO mortality table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed with the commissioner shall be completed pursuant to section 830a. An insurer that does business in this state and in no other state may be exempted from this subsection by the commissioner.

(7) In valuing life insurance policies pursuant to appendix A-830 of the NAIC accounting practices and procedures manual, all of the following apply:

(a) In determining the applicability to any universal life policy, the net level reserve premium for the secondary guarantee period is based on the ultimate mortality rates in the 2001 CSO mortality table.

(b) All calculations under the contract segmentation method are made using the 2001 CSO mortality rate, and, if elected, the optional minimum mortality standard for deficiency reserves. The value of “ $q_{x+k+t-1}$ ” is the valuation mortality rate for deficiency reserves in policy year  $k+t$ , but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(c) For purposes of general calculation requirements for basic reserves and premium deficiency reserves, the 2001 CSO mortality table is the minimum standard for basic reserves.

(d) For purposes of general calculation requirements for basic reserves and premium deficiency reserves, the 2001 CSO mortality table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions set forth in appendix A-830 of the NAIC accounting practices and procedures manual. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO mortality table with those tests that utilize the 2001 CSO mortality table, unless the combination is explicitly required by regulation or is necessary to be in compliance with relevant actuarial standards of practice.

(e) When determining minimum value for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, the valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO mortality table.

(f) When determining the optional exemption for yearly renewable term reinsurance for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, the calculations shall use the maximum valuation interest rate and the ultimate mortality rates in the 2001 CSO mortality table.

(g) When determining the optional exemption for attained-age-based yearly renewable term life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, the calculations shall use the maximum valuation interest rate and the ultimate mortality rates in the 2001 CSO mortality table.

(h) When determining the exemption from unitary reserves for certain n-year renewable term life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, the calculations shall use the ultimate mortality rates in the 2001 CSO mortality table.

(i) For flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period, the 1-year valuation premium for purposes of identifying policies with a secondary guarantee shall be calculated using the ultimate mortality rates in the 2001 CSO mortality table.

(8) For any ordinary life insurance policy delivered or issued for delivery in this state on or after July 1, 2004 that uses the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO mortality table (M) and the 2001 CSO mortality table (F) may, at the option of the insurer for each plan of insurance, be substituted for the 2001 CSO mortality table for use in determining minimum cash surrender value and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection.

(9) In determining minimum reserve liabilities and nonforfeiture benefits, an insurer may choose from among the blended tables developed by the American academy of actuaries CSO task force and adopted by the NAIC in December 2002.

(10) It is not, by itself, a violation of chapter 20 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

### **500.4060 Standard nonforfeiture law for life insurance.**

Sec. 4060. (1) This section shall be known as the standard nonforfeiture law for life insurance and shall apply to life insurance contracts except as otherwise provided in section 4061 for universal life insurance contracts.

(2) For policies issued on and after the operative date of this section, as defined in subsection (10), a policy of life insurance, except as stated in subsection (9), shall not be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this subsection and are essentially in compliance with subsection (8):

(a) That in the event of default in a premium payment, the company will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of that due date, of an amount as specified in this section. In lieu of the stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(b) That upon surrender of the policy within 60 days after the due date of a premium payment in default, after premiums have been paid for not less than 3 full years in the case of ordinary insurance or 5 full years in the case of industrial insurance, the company will pay, in place of any paid-up nonforfeiture benefit, a cash surrender value of an amount specified in this section.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make the election elects another available option not later than 60 days after the due date of the premium in default.

(d) That if the policy has become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of an amount specified in this section.

(e) That for policies that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy.

For all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter. The values and benefits shall be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the insurance supervisory

official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which the values and benefits are consecutively shown in the policy.

Subdivisions (a) to (f) or portions of those subdivisions not applicable by reason of the plan of insurance, to the extent inapplicable, may be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand for the payment with surrender of the policy.

(3) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (2), shall be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits that would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in subsection (5), corresponding to premiums that would have fallen due on and after the anniversary, and the amount of any indebtedness to the company on the policy. However, for any policy issued on or after the operative date of paragraphs 9 to 19 of subsection (5) that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value for a policy that provides only the benefits otherwise provided by the rider or supplemental policy provision.

For any family policy issued on or after the operative date of paragraphs 9 to 19 of subsection (5) that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age 71, the cash surrender value shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without the term insurance on the life of the spouse and the cash surrender value for a policy that provides only the benefits otherwise provided by the term insurance on the life of the spouse.

Any cash surrender value available within 30 days after a policy anniversary under a policy paid up by completion of all premium payments or a policy continued under a paid-up nonforfeiture benefit, whether or not required by subsection (2), shall be an amount not less than the present value, on the anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on a policy anniversary shall be such that its present value as of the anniversary shall at least equal the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value that would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) Paragraphs 1 to 8 of this subsection shall not apply to policies issued on or after the operative date of paragraphs 9 to 19 as defined in paragraph 19. Except as provided in the third paragraph of this subsection, the adjusted premiums for a policy shall be calculated on an annual basis and shall be a uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, so that the present value, at the date of issue of the policy, of all the adjusted premiums equals the sum of (I) the then present value of the future

guaranteed benefits provided for by the policy; (II) 2% of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (III) 40% of the adjusted premium for the first policy year; (IV) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. In applying the percentages specified in items (III) and (IV) above, an adjusted premium shall not be considered to exceed 4% of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount of the policy for the purpose of this subsection shall be considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy. However, in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy before the attainment of age 10 were the amount provided by the policy at age 10.

The adjusted premiums for a policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits, increased, during the period for which premiums for the term insurance benefits are payable, by (b) the adjusted premiums for that term insurance. Items (a) and (b) shall be calculated separately and as specified in the first 2 paragraphs of this subsection. However, for the purposes of items (II), (III), and (IV) of the first paragraph of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in paragraph 5 of this subsection, for all policies of ordinary insurance, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1941 standard ordinary mortality table. For a category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 3 years younger than the actual age of the insured. Except as otherwise provided in paragraph 7 of this subsection, the calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130% of the rates of mortality according to the applicable table. For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on another table of mortality as specified by the company and approved by the commissioner.

For ordinary policies issued on or after the operative date of this paragraph, as defined in paragraph 6, all adjusted premiums and present values referred to in this section shall

be calculated on the basis of the commissioners 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. However, the rate of interest shall not exceed 3-1/2% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after October 21, 1974, and before October 1, 1980, and a rate of interest not exceeding 5-1/2% per annum may be used for policies issued on or after October 1, 1980. For a category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured. In calculating the present value of a paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1958 extended term insurance table. For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on another table of mortality as specified by the company and approved by the commissioner.

After May 23, 1960, any company may file with the commissioner a written notice of its election to invoke the provisions of paragraph 5 after a specified date before January 1, 1966. After the filing of the notice, then on the specified date, that shall be the operative date for the company, paragraph 5 shall become operative with respect to the ordinary policies issued by the company and bearing a date of issue that is the same as or later than the specified date. If a company does not make an election, the operative date of paragraph 5 for the company shall be January 1, 1966.

For industrial policies issued on or after the operative date of this paragraph, as defined in paragraph 8, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the commissioners 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. However, the rate of interest shall not exceed 3-1/2% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after October 21, 1974, and before October 1, 1980, and a rate of interest not exceeding 5-1/2% per annum may be used for policies issued on or after October 1, 1980. In calculating the present value of paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on another table of mortality as specified by the company and approved by the commissioner.

After May 23, 1969, a company may file with the commissioner a written notice of its election to invoke the provisions of paragraph 7 after a specified date before January 1, 1968. After the filing of the notice, then on the specified date, which shall be the operative date for the company, paragraph 7 shall become operative with respect to the industrial policies issued by the company and that bear a date of issue the same as or later than the specified date. If a company does not make an election, the operative date of paragraph 7 for the company shall be January 1, 1968.

Paragraphs 9 to 19 shall apply to all policies issued on or after the operative date of those paragraphs as defined in paragraph 19. Except as provided in paragraph 15, the adjusted premiums for any policy shall be calculated on an annual basis and shall be a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, so that the present value, at the date of issue of the policy, of

all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) 1% of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and (iii) 125% of the nonforfeiture net level premium as defined in this subsection. However, in applying the percentage specified in (iii), the nonforfeiture net level premium shall not be deemed to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of 1 per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

For policies that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values initially shall be calculated on the assumption that future benefits and premiums will not change from those stipulated at the date of issue of the policy. At the time of a change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums will not change from those stipulated by the policy immediately after the change.

Except as otherwise provided in paragraph 15 of this subsection, the recalculated future adjusted premiums shall be a uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards and excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, so that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of the sum of the then present value of the then future guaranteed benefits provided for by the policy and the additional expense allowance, if any, over the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years after the change over the average amount of insurance before the change at the beginning of each of the first 10 policy years after the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and 125% of the increase, if positive, in the nonforfeiture net level premium.

The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b) where (a) equals the sum of (i) the nonforfeiture net level premium applicable before the change times the present value of an annuity of 1 per annum payable on each anniversary of the policy on or after the date of the change on which a premium would have fallen due had the change not occurred; and (ii) the present value of the increase in future guaranteed benefits provided for by the policy, and (b) equals the present value of an annuity of 1 per annum payable on each anniversary of the policy on or after the date of change on which a premium falls due.

Notwithstanding any other provisions of this subsection to the contrary, for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that,

in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.

All adjusted premiums and present values referred to in this section for all policies of ordinary insurance shall be calculated on the basis of the commissioners 1980 standard ordinary mortality table or, at the election of the company for any 1 or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values referred to in this section for all policies of industrial insurance shall be calculated on the basis of the commissioners 1961 standard industrial mortality table. All adjusted premiums and present values referred to in this section for all policies issued in a particular calendar year shall be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year. However:

(a) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (2), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of that paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions, under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of adjusted premiums and present values may be based on appropriate modifications of the tables provided in subdivision (d).

(f) Any ordinary mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by a rule promulgated by the commissioner for use in determining the minimum nonforfeiture standard or as provided under section 838 may be substituted for the commissioners 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioners 1980 extended term insurance table.

(g) Any industrial mortality tables, adopted after 1980 by the national association of insurance commissioners, that are approved by a rule promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.

The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, rounded to the nearest 0.25%.

Notwithstanding any other provision in this act to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with paragraphs 9 to 19 of this subsection at a specified date before January 1, 1989, which shall be the operative date of those paragraphs for that company. If a company makes no election, the operative date of paragraphs 9 to 19 of this subsection for the company shall be January 1, 1989.

(6) For any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or for any plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in subsections (2) to (5):

(a) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (2) to (5).

(b) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not misleading to prospective policyholders or insureds.

(c) The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by rules promulgated by the commissioner.

(7) Any cash surrender value and paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at a time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (3), (4), and (5) may be calculated on the assumption that a death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide the additions. Notwithstanding subsection (3), additional benefits payable in any of the following ways, and premiums for all these additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and the additional benefits shall not be required to be included in any paid-up nonforfeiture benefits:

(a) In the event of death or dismemberment by accident or accidental means.

(b) In the event of total and permanent disability.

(c) As reversionary annuity or deferred reversionary annuity benefits.

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply.

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if the term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid-up by reason of the death of a parent of the child.

(f) As other policy benefits additional to life insurance and endowment benefits.

(8) This subsection shall apply to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount that does not differ by more than 0.2% of either the amount of insurance, if the insurance is uniform in amount, or the

average amount of insurance at the beginning of each of the first 10 policy years from the sum of (a) the greater of zero and the basic cash value as specified in this subsection and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value on such anniversary of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default less the then present value of the nonforfeiture factors, as defined in this subsection, corresponding to premiums that would have fallen due on and after such anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage shall be the same as are the effects specified in subsection (3) or (5), whichever is applicable, on the cash surrender values.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in paragraphs 1 to 4 of subsection (5) or paragraphs 9 to 19 of subsection (5), whichever is applicable. The nonforfeiture factor:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary and the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 0.2% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) Must be such that no percentage after the later of the 2 policy anniversaries specified in subdivision (a) may apply to fewer than 5 consecutive policy years.

However, the basic cash value may not be less than the value that would be obtained if the adjusted premiums for the policy, as defined in paragraphs 1 to 4 or paragraphs 9 to 19 of subsection (5), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall be calculated for a particular policy on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (2), (3), (4), and (7) and paragraphs 9 to 19 of subsection (5). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in subsection (7) shall conform with the principles of this subsection.

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

(a) Reinsurance.

(b) Group insurance.

(c) Pure endowment.

(d) Annuity or reversionary annuity contract.

(e) A term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy.

(f) A term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsection (5), is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy.

(g) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (3) to (5), exceeds 2.5% of the amount of insurance at the beginning of the same policy year.

(h) A policy that shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(10) After July 30, 1943, a company may file with the commissioner a written notice of its election to comply with this section after a specified date before January 1, 1948. After the filing of the notice, then on the specified date, which shall be the operative date for the company, this section shall become operative with respect to the policies thereafter issued by the company. If a company does not make an election, the operative date of this section for the company shall be January 1, 1948.

**Effective date.**

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

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

---

**[No. 237]**

**(SB 1167)**

AN ACT to amend 1994 PA 295, entitled “An act to require persons convicted of certain offenses to register; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe penalties and sanctions,” by amending the title and sections 4, 4a, 5a, 7, and 9 (MCL 28.724, 28.724a, 28.725a, 28.727, and 28.729), section 4 as amended by 1999 PA 85 and section 4a as added and sections 5a, 7, and 9 as amended by 2002 PA 542, and by adding sections 5b and 5c.

*The People of the State of Michigan enact:*

TITLE

An act to require persons convicted of certain offenses to register; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe fees, penalties, and sanctions.

**28.724 Registration; procedures.**

Sec. 4. (1) Registration of an individual under this act shall proceed as provided in this section.

(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:

(a) If the individual is on probation for the listed offense, the individual's probation officer.

(b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.

(c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.

(d) If the individual is on parole for the listed offense, the individual's parole officer.

(e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.

(3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995:

(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation officer shall register the individual before sentencing or assignment.

(b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole officer shall register the individual within 14 days after the transfer.

(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of social services or family independence agency under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.

(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual:

(a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual's probation or parole officer not later than September 12, 1999.

(b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999.

(c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999.

(d) If the individual is within the jurisdiction of the family division of circuit court or committed to the family independence agency or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the family independence agency, or the county juvenile agency not later than November 30, 1999.

(e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation officer shall register the individual before sentencing or assignment.

(f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole officer shall register the individual within 14 days after the transfer.

(g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the family independence agency for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered.

(5) Subject to section 3(1) and (2), an individual convicted of a listed offense in this state after October 1, 1995 shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status. The probation officer or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and to pay a registration fee, to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under section 6. The court shall not impose sentence, enter the order of disposition, or assign the individual to youthful trainee status until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department within 14 days after becoming domiciled or temporarily residing, working, or being a student in this state for the periods specified in section 3(1):

(a) Subject to section 3(1), an individual convicted in another state or country after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

### **28.724a Status report to local law enforcement agency; requirements; reports; written documentation.**

Sec. 4a. (1) An individual required to be registered under this act who is not a resident of this state shall report his or her status in person to the local law enforcement agency or sheriff's department having jurisdiction over a campus of an institution of higher education, or to the department post nearest to that campus, if any of the following occur:

(a) Regardless of whether he or she is financially compensated or receives any governmental or educational benefit, the individual is or becomes a full- or part-time employee, contractual provider, or volunteer with that institution of higher education and his or her position will require that he or she be present on that campus for 14 or more consecutive days or 30 or more total days in a calendar year.

(b) The individual is or becomes an employee of a contractual provider described in subdivision (a) and his or her position will require that he or she be present on that campus for 14 or more consecutive days or 30 or more total days in a calendar year.

(c) The status described in subdivision (a) or (b) is discontinued.

(d) The individual changes the campus on which he or she is an employee, a contractual provider, an employee of a contractual provider, or a volunteer as described in subdivision (a) or (b).

(e) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

(f) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or another country for 14 or more consecutive days or 30 or more total days in a calendar year, or the individual discontinues his or her studies at that location.

(2) An individual required to be registered under this act who is a resident of this state shall report his or her status in person to the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located or the department post nearest to the individual's new residence or domicile, if any of the events described under subsection (1) occur.

(3) The report required under subsections (1) and (2) shall be made as follows:

(a) For an individual registered under this act before October 1, 2002 who is required to make his or her first report under subsections (1) and (2), not later than January 15, 2003.

(b) For an individual who is an employee, a contractual provider, an employee of a contractual provider, or a volunteer on that campus on October 1, 2002, or who is a student on that campus on October 1, 2002, who is subsequently required to register under this act, on the date he or she is required to register under this act.

(c) Except as provided under subdivisions (a) and (b), within 10 days after the individual becomes an employee, a contractual provider, an employee of a contractual provider, or a volunteer on that campus, or discontinues that status, or changes location, or within 10 days after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States, or another country.

(4) The additional registration reports required under this section shall be made in the time periods described in section 5a(4)(a) and (b) for reports under that section.

(5) The local law enforcement agency, sheriff's department, or department post to which an individual reports under this section shall require the individual to pay the registration fee required under section 5a or section 7(1) and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation under this subsection may include, but need not be limited to, any of the following:

(a) A W-2 form, pay stub, or written statement by an employer.

(b) A contract.

(c) A student identification card or student transcript.

### **28.725a Notice to registered individual; explanation of duties.**

Sec. 5a. (1) Not later than December 1, 2004, the department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this section and this act as amended and the procedure for registration, notification, and verification and paying the registration fee prescribed under subsection (6) or section 7(1).

(2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act as amended and the procedure for registration, notification, verification, and payment of the registration fee prescribed under subsection (6) or section 7(1). The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice

in the individual's file. The department of corrections shall forward the original notice to the department within 30 days, regardless of whether the individual signs it.

(3) Not later than January 15, 2000, an individual registered under this act who is not incarcerated shall report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she is domiciled or resides or to the department post in or nearest to the county where he or she is domiciled or resides. The individual shall present proof of domicile or residence and update any information that changed since registration, including information that is required to be reported under section 4a. An individual registered under this act who is incarcerated on January 15, 2000 shall report under this subsection not less than 10 days after he or she is released.

(4) Following initial verification under subsection (3), or registration under this act after January 15, 2000, an individual required to be registered under this act who is not incarcerated shall report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she is domiciled or resides or to the department post in or nearest to the county where he or she is domiciled or resides for verification of domicile or residence as follows:

(a) If the person is registered only for 1 or more misdemeanor listed offenses, not earlier than January 1 or later than January 15 of each year after the initial verification or registration. As used in this subdivision, "misdemeanor listed offense" means a listed offense that is any of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, committed before June 1, 2002.

(ii) A violation of section 145c(4), 167(1)(f), or 448 of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.167, and 750.448.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, other than a violation committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(iv) A violation of a local ordinance of a municipality substantially corresponding to a section described in subparagraph (i), (ii), or (iii).

(v) A violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age if the violation is not specifically designated a felony and is punishable by imprisonment for 1 year or less.

(vi) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (v).

(vii) An offense substantially similar to an offense described in subparagraphs (i) to (vi) under a law of the United States, any state, or any country or under tribal or military law.

(b) If the person is registered for 1 or more felony listed offenses, not earlier than the first day or later than the fifteenth day of each April, July, October, and January following initial verification or registration. As used in this subdivision, "felony listed offense" means a listed offense that is any of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, committed on or after June 1, 2002.

(ii) A violation of section 145b, 145c(2) or (3), 349, 350, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145b, 750.145c, 750.349, 750.350, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(iv) A violation of a law of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age if the violation is specifically designated a felony or is punishable by imprisonment for more than 1 year.

(v) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (iv).

(vi) An offense substantially similar to an offense described in subparagraphs (i) to (v) under a law of the United States, any state, or any country or under tribal or military law.

(5) When an individual reports under subsection (3) or (4), an officer or authorized employee of the local law enforcement agency, sheriff's department, or department post shall verify the individual's residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall sign and date a verification form. The officer shall give a copy of the signed form showing the date of verification to the individual. The officer or employee shall forward verification information to the department by the law enforcement information network in the manner the department prescribes. The department shall revise the data bases maintained under section 8 as necessary and shall indicate verification in the compilation under section 8(2).

(6) Except as otherwise provided in section 5b, an individual who reports as prescribed under subsection (3) or (4) and who has not already paid the fee prescribed under section 7(1) shall pay a \$35.00 registration fee. An individual shall only be required to pay a fee once under this subsection.

(7) An individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including but not limited to voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence.

(8) Not earlier than January 1, 2000 or later than January 15, 2000, an individual registered under this act who is not incarcerated shall report in person to a secretary of state office and have his or her digitized photograph taken. An individual registered under this act who is incarcerated on January 15, 2000 shall report under this subsection not less than 10 days after he or she is released. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released. The photograph shall be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken when he or she renews the license or identification card as provided by law. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(9) If an individual does not report under subsection (3) or (4) or section 4a, the department shall notify the local law enforcement agency, sheriff's department, or department post. An appearance ticket may be issued for the individual's failure to report as provided in sections 9a to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(10) The department shall prescribe the form for the notices and verification procedures required under this section.

**28.725b Sex offenders registration fund; creation; disposition of money; use; lapse; claim of indigence; waiver of fee; payments.**

Sec. 5b. (1) Of the money collected by a court, local law enforcement agency, sheriff's department, or department post from each registration fee prescribed under this act, \$25.00 shall be forwarded to the department, which shall deposit the money in the sex offenders registration fund created under subsection (2), and \$10.00 shall be retained by the court, local law enforcement agency, sheriff's department, or department post.

(2) The sex offenders registration fund is created as a separate fund in the department of treasury. The state treasurer shall credit the money received from the payment of the registration fee prescribed under this act to the sex offenders registration fund. Money credited to the fund shall only be used by the department for training concerning, and the maintenance and automation of, the databases, compilation, and information required under section 8. Money in the sex offenders registration fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) If an individual required to pay a registration fee under this act is indigent, the registration fee shall be temporarily waived. The burden is on the individual claiming indigence to prove the fact of indigence to the satisfaction of the local law enforcement agency, sheriff's department, or department post where the individual is reporting.

(4) Payment of the registration fee prescribed under this act shall be made in the form and by means prescribed by the department. Upon payment of the registration fee prescribed under this act, the officer or employee shall forward verification of the payment to the department by the law enforcement information network in the manner the department prescribes. The department shall revise the databases maintained under section 8 as necessary and shall indicate verification of payment in the compilation under section 8(2).

**28.725c Fee collected by department of corrections; prohibition.**

Sec. 5c. The department of corrections shall not collect any fee prescribed under this act.

**28.727 Registration form.**

Sec. 7. (1) A registration under this act shall be made on a form provided by the department and shall be forwarded to the department in the format the department prescribes, along with a \$35.00 registration fee for each original registration, except as otherwise provided in section 5b. A registration shall contain all of the following:

(a) The individual's name, social security number, date of birth, and address or expected address. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases shall not contain any information identifying the individual's prior identity or locale. The department shall request each individual to provide his or her date of birth if it is not included in the registration, and that individual shall comply with the request within 10 days.

(b) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(c) A complete physical description of the individual.

(d) The photograph required under section 5a.

(e) The individual's fingerprints if not already on file with the department. An individual required to be registered on September 1, 1999 shall have his or her fingerprints taken not later than September 12, 1999 if not already on file with the department. The department shall forward a copy of the individual's fingerprints to the federal bureau of investigation if not already on file with that bureau.

(f) Information that is required to be reported under section 4a.

(2) A registration may contain the individual's blood type and whether a DNA identification profile of the individual is available.

(3) The form used for registration or verification under this act shall contain a written statement that explains the duty of the individual being registered to provide notice of a change of address under section 5, the procedures for providing that notice, and the verification procedures under section 5a.

(4) The individual shall sign a registration, notice, and verification. However, the registration, notice, or verification shall be forwarded to the department regardless of whether the individual signs it or pays the registration fee required under subsection (1).

(5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 4 shall sign the registration form.

(6) An individual shall not knowingly provide false or misleading information concerning a registration, notice, or verification.

(7) The department shall prescribe the form for a notification required under section 5 and the format for forwarding the notification to the department.

(8) The department shall promptly provide registration, notice, and verification information to the federal bureau of investigation and to local law enforcement agencies, sheriff's departments, department posts, and agencies of other states requiring the information, as provided by law.

## **28.729 Violations; penalties.**

Sec. 9. (1) Except as provided in subsections (2), (3), and (4), an individual required to be registered under this act who willfully violates this act is guilty of a felony punishable as follows:

(a) If the individual has no prior convictions for a violation of this act, other than a failure to comply with section 5a, by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(b) If the individual has 1 prior conviction for a violation of this act, other than a failure to comply with section 5a, by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(c) If the individual has 2 or more prior convictions for violations of this act, other than a failure to comply with section 5a, by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(2) An individual who fails to comply with section 5a, other than payment of the fee required under section 5a(6) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(3) An individual who willfully fails to sign a registration, notice, or verification as provided in section 7(4) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(4) An individual who willfully refuses or fails to pay the registration fee prescribed in section 5a(6) or section 7(1) within 90 days of the date the individual reports under section 4a or 5a is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.

(5) The court shall revoke the probation of an individual placed on probation who willfully violates this act.

(6) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act.

(7) The parole board shall rescind the parole of an individual released on parole who willfully violates this act.

(8) An individual's failure to register as required by this act or a violation of section 5(1), (3), or (4) may be prosecuted in the judicial district of any of the following:

- (a) The individual's last registered address or residence.
- (b) The individual's actual address or residence.
- (c) Where the individual was arrested for the violation.

**Effective date.**

Enacting section 1. This amendatory act takes effect October 16, 2004.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) House Bill No. 4920.
- (b) House Bill No. 5195.
- (c) House Bill No. 5240.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

---

**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

House Bill No. 4920 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 240, Eff. Oct. 1, 2004.

House Bill No. 5195 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 238, Eff. May 1, 2005.

House Bill No. 5240 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 239, Eff. Oct. 1, 2004.

---

**[No. 238]**

**(HB 5195)**

AN ACT to amend 1994 PA 295, entitled "An act to require persons convicted of certain offenses to register; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe penalties and sanctions," by amending section 8 (MCL 28.728), as amended by 2002 PA 542.

*The People of the State of Michigan enact:*

**28.728 Data base; compilation; availability.**

Sec. 8. (1) The department shall maintain a computerized data base of registrations and notices required under this act.

(2) The department shall maintain a computerized data base separate from that described in subsection (1) to implement section 10(2) and (3). The data base shall consist of a compilation of individuals registered under this act, but except as provided in this subsection, shall not include any individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. The exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.

(3) The compilation of individuals shall be indexed numerically by zip code area. Within each zip code area, the compilation shall contain all of the following information:

(a) The name and aliases, address, physical description, and birth date of each individual registered under this act who is included in the compilation and who resides in that zip code area and any listed offense of which the individual has been convicted.

(b) The name and campus location of each institution of higher education to which the individual is required to report under section 4a.

(c) The photograph of each individual registered under this act. The department shall obtain the photographs submitted under section 5a from the secretary of state for purposes of implementing this subdivision.

(4) The department shall update the compilation with new registrations, deletions from registrations, and address changes at the same time those changes are made to the data base described in subsection (1). The department shall make the compilation available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the compilation in printed form for the zip code areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a computerized search of the compilation based upon the name and campus location of an institution of higher education described in subsection (3)(b).

(5) The department shall make the compilation or information from the compilation available to a department post, local law enforcement agency, sheriff's department, and the public by electronic, computerized, or other similar means accessible to the post, agency, or sheriff's department. The electronic, computerized, or other similar means shall provide for both a search by name and by zip code.

(6) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act, including names and aliases, addresses, physical descriptions, or dates of birth, violates the constitution of the United States or this state, the department shall revise the compilation in subsection (2) so that it does not contain that information.

### **Effective date.**

Enacting section 1. This amendatory act takes effect May 1, 2005.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

**[No. 239]****(HB 5240)**

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 sections 11, 13, and 14 of chapter II (MCL 762.11, 762.13, and 762.14), section 11 as amended by 1993 PA 293, section 13 as amended by 2002 PA 483, and section 14 as amended by 1994 PA 286.

*The People of the State of Michigan enact:*

## CHAPTER II

**762.11 Criminal offense by individual between ages 17 and 20; assignment to status of youthful trainee; exceptions; definitions.**

Sec. 11. (1) Except as provided in subsections (2) and (3), if an individual pleads guilty to a criminal offense, committed on or after the individual's seventeenth birthday but before his or her twenty-first birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee.

(2) Subsection (1) does not apply to any of the following:

- (a) A felony for which the maximum penalty is imprisonment for life.
- (b) A major controlled substance offense.
- (c) A traffic offense.

(d) A violation, attempted violation, or conspiracy to violate section 520b, 520c, 520d, or 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520e, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.

(e) A violation, attempted violation, or conspiracy to violate section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g, with the intent to commit a violation of

section 520b, 520c, 520d, or 520e of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520e, other than section 520d(1)(a) or 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d and 750.520e.

(3) The court shall not assign an individual to the status of youthful trainee if any of the following apply:

(a) The individual was previously convicted of or adjudicated for a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732.

(b) If the individual is charged with a listed offense for which registration is required under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to engage in further listed offenses.

(c) The court determines that the offense involved any of the following:

(i) A factor set forth in section 520b(1)(a) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(ii) A factor set forth in section 520c(1)(a) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.

(4) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Traffic offense" means a violation of the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a violation of a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and, at the time of the violation, is a felony or a misdemeanor.

## **762.13 Assignment as youthful trainee; duties of court.**

Sec. 13. (1) If an individual is assigned to the status of a youthful trainee and the underlying charge is an offense punishable by imprisonment for a term of more than 1 year, the court shall do 1 of the following:

(a) Commit the individual to the department of corrections for custodial supervision and training for not more than 3 years in an institutional facility designated by the department for that purpose.

(b) Place the individual on probation for not more than 3 years subject to probation conditions as provided in section 3 of chapter XI. Beginning January 1, 2005, the terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(c) Commit the individual to the county jail for not more than 1 year.

(2) If an individual is assigned to the status of youthful trainee and the underlying charge is for an offense punishable by imprisonment for 1 year or less, the court shall place the individual on probation for not more than 2 years, subject to probation conditions as provided in section 3 of chapter XI.

(3) An individual placed on probation pursuant to this section shall be under the supervision of a probation officer. Upon commitment to and receipt by the department of

corrections, a youthful trainee shall be subject to the direction of the department of corrections.

(4) If an individual is committed to the county jail under subsection (1)(c) or as a probation condition, the court may authorize work release or release for educational purposes.

(5) The court shall include in each order of probation for an individual placed on probation under this section that the department of corrections shall collect a probation supervision fee of not more than \$135.00 multiplied by the number of months of probation ordered, but not more than 36 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
\$ 0-249.99	\$ 0.00
\$ 250.00-499.99	\$ 10.00
\$ 500.00-749.99	\$ 25.00
\$ 750.00-999.99	\$ 40.00
\$1,000.00 or more	5% of projected monthly income, but not more than \$135.00

The court may order a higher amount than indicated by the table, up to the maximum of \$135.00 multiplied by the number of months of probation ordered but not more than 36 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount shall be stated in the court order. The fee shall be collected as provided in section 25a of the corrections code of 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject to more than 1 supervision fee at the same time. If a supervision fee is ordered for a person for any month or months during which that person already is subject to a supervision fee, the court shall waive the fee having the shorter remaining duration.

(6) If the individual is assigned to youthful trainee status before October 1, 2004 for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, the department of corrections, sheriff or his or her designee, or the individual's probation officer shall register the individual or accept the individual's registration as provided under that act.

**762.14 Discharge of individual and dismissal of proceedings upon final release; assignment as youthful trainee not conviction; compliance with sex offenders registration; proceedings closed to public inspection; inspection by courts, state departments, and law enforcement personnel.**

Sec. 14. (1) If consideration of an individual as a youthful trainee is not terminated and the status of youthful trainee is not revoked as provided in section 12 of this chapter, upon final release of the individual from the status as youthful trainee, the court shall discharge the individual and dismiss the proceedings.

(2) An assignment of an individual to the status of youthful trainee as provided in this chapter is not a conviction for a crime and, except as provided in subsection (3), the individual assigned to the status of youthful trainee shall not suffer a civil disability or loss

of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee.

(3) An individual assigned to youthful trainee status before October 1, 2004 for a listed offense enumerated in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, is required to comply with the requirements of that act.

(4) Unless the court enters a judgment of conviction against the individual for the criminal offense under section 12 of this chapter, all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection, but shall be open to the courts of this state, the department of corrections, the family independence agency, law enforcement personnel and, beginning January 1, 2005, prosecuting attorneys for use only in the performance of their duties.

### **Effective date.**

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

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4920 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

---

**Compiler's note:** House Bill No. 4920, referred to in enacting section 2, was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 240, Eff. Oct. 1, 2004.

---

## **[No. 240]**

### **(HB 4920)**

AN ACT to amend 1994 PA 295, entitled "An act to require persons convicted of certain offenses to register; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe penalties and sanctions," by amending sections 2, 4, 5, 5a, 8, and 10 (MCL 28.722, 28.724, 28.725, 28.725a, 28.728, and 28.730), sections 2, 5, 5a, 8, and 10 as amended by 2002 PA 542 and section 4 as amended by 1999 PA 85, and by adding sections 8c and 8d; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

### **28.722 Definitions.**

Sec. 2. As used in this act:

(a) "Convicted" means 1 of the following:

(i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court, and including a conviction subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624.

(ii) Either of the following:

(A) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004.

(B) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, on or after October 1, 2004 if the individual's status of youthful trainee is revoked and an adjudication of guilt is entered.

(iii) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28.

(iv) Having an order of disposition or other adjudication in a juvenile matter in another state or country.

(b) "Department" means the department of state police.

(c) "Institution of higher education" means 1 or more of the following:

(i) A public or private community college, college, or university.

(ii) A public or private trade, vocational, or occupational school.

(d) "Local law enforcement agency" means the police department of a municipality.

(e) "Listed offense" means any of the following:

(i) A violation of section 145a, 145b, or 145c of the Michigan penal code, 1931 PA 328, MCL 750.145a, 750.145b, and 750.145c.

(ii) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, if a victim is an individual less than 18 years of age.

(iii) A third or subsequent violation of any combination of the following:

(A) Section 167(1)(f) of the Michigan penal code, 1931 PA 328, MCL 750.167.

(B) Section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a.

(C) A local ordinance of a municipality substantially corresponding to a section described in sub-subparagraph (A) or (B).

(iv) Except for a juvenile disposition or adjudication, a violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, if a victim is an individual less than 18 years of age.

(v) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, if a victim is an individual less than 18 years of age.

(vi) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

(vii) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if a victim is an individual less than 18 years of age.

(viii) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.

(ix) A violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(x) Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.

(xi) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi).

(xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xii) under a law of the United States, any state, or any country or under tribal or military law.

(f) “Municipality” means a city, village, or township of this state.

(g) “Residence”, as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. This section shall not be construed to affect existing judicial interpretation of the term residence.

(h) “Student” means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.

### **28.724 Registration; procedures.**

Sec. 4. (1) Registration of an individual under this act shall proceed as provided in this section.

(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:

(a) If the individual is on probation for the listed offense, the individual’s probation officer.

(b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.

(c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.

(d) If the individual is on parole for the listed offense, the individual’s parole officer.

(e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.

(3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995:

(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation officer shall register the individual before sentencing or assignment.

(b) If the individual’s probation or parole is transferred to this state after October 1, 1995, the probation or parole officer shall register the individual within 14 days after the transfer.

(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of social services or family independence agency under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.

(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual:

(a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual’s probation or parole officer not later than September 12, 1999.

(b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999.

(c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999.

(d) If the individual is within the jurisdiction of the family division of circuit court or committed to the family independence agency or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the family independence agency, or the county juvenile agency not later than November 30, 1999.

(e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation officer shall register the individual before sentencing or assignment.

(f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole officer shall register the individual within 14 days after the transfer.

(g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the family independence agency for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered.

(5) Subject to section 3, an individual convicted of a listed offense in this state after October 1, 1995 shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status. The probation officer or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and to pay a registration fee, to verify his or her address, and to provide notice of address changes, and accept the completed registration for processing under section 6. The court shall not impose sentence, enter the order of disposition, or, before October 1, 2004, assign the individual to youthful trainee status, until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department within 14 days after becoming domiciled or temporarily residing, working, or being a student in this state for the periods specified in section 3(1):

(a) Subject to section 3(1), an individual convicted in another state or country after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

### **28.725 Notice to law enforcement agency.**

Sec. 5. (1) Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence or domicile is located or the department post of the individual's new residence or domicile:

(a) The individual changes his or her residence, domicile, or place of work or education, including any change required to be reported under section 4a.

(b) The individual is paroled.

(c) Final release of the individual from the jurisdiction of the department of corrections.

(2) Within 10 days after either of the following occurs, the department of corrections shall notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the department post of the transferred residence or domicile of an individual required to be registered under this act:

(a) The individual is transferred to a community residential program.

(b) The individual is transferred into a minimum custody correctional facility of any kind, including a correctional camp or work camp.

(3) An individual required to be registered under this act shall notify the department on a form prescribed by the department not later than 10 days before he or she changes his or her domicile or residence to another state. The individual shall indicate the new state and, if known, the new address. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state.

(4) If the probation or parole of an individual required to be registered under this act is transferred to another state or an individual required to be registered under this act is transferred from a state correctional facility to any correctional facility or probation or parole in another state, the department of corrections shall promptly notify the department and the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. The department shall update the registration and compilation databases.

(5) An individual registered under this act shall comply with the verification procedures and proof of residence procedures prescribed in sections 4a and 5a.

(6) Except as provided in subsections (7) and (8), an individual shall comply with this section for 25 years after the date of initially registering or, if the individual is in a state correctional facility, for 10 years after release from the state correctional facility, whichever is longer.

(7) Except as provided in subsection (8), an individual shall comply with this section for life if the individual is convicted of any of the following or a substantially similar offense under a law of the United States, any state, or any country or under tribal or military law:

(a) A violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(b) A violation of section 520c(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(c) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, if the victim is less than 18 years of age.

(d) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

(e) A violation of section 145c(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(f) An attempt or conspiracy to commit an offense described in subdivisions (a) to (e).

(g) Except as provided in this subdivision, a second or subsequent listed offense after October 1, 1995 regardless of when any earlier listed offense was committed. An individual is not required to comply with this section for life if his or her first or second listed offense is for a conviction on or before September 1, 1999 for an offense that was added

on September 1, 1999 to the definition of listed offense, unless he or she is convicted of a subsequent listed offense after September 1, 1999.

(8) An individual who is ordered to register as provided in section 8d shall register subject to that section.

### **28.725a Notice to registered individual; explanation of duties; reporting requirements.**

Sec. 5a. (1) Not later than December 1, 2004, the department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this section and this act as amended and the procedure for registration, notification, and verification and paying the registration fee prescribed under subsection (7) or section 7(1).

(2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act as amended and the procedure for registration, notification, and verification and payment of the registration fee prescribed under subsection (7) or section 7(1). The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice in the individual's file. The department of corrections shall forward the original notice to the department within 30 days, regardless of whether the individual signs it.

(3) Not later than January 15, 2000, an individual registered under this act who is not incarcerated shall report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she is domiciled or resides or to the department post in or nearest to the county where he or she is domiciled or resides. The individual shall present proof of domicile or residence and update any information that changed since registration, including information that is required to be reported under section 4a. An individual registered under this act who is incarcerated on January 15, 2000 shall report under this subsection not less than 10 days after he or she is released.

(4) Except as provided in subsection (5), following initial verification under subsection (3), or registration under this act after January 15, 2000, an individual required to be registered under this act who is not incarcerated shall report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she is domiciled or resides or to the department post in or nearest to the county where he or she is domiciled or resides for verification of domicile or residence as follows:

(a) If the person is registered only for 1 or more misdemeanor listed offenses, not earlier than January 1 or later than January 15 of each year after the initial verification or registration. As used in this subdivision, "misdemeanor listed offense" means a listed offense that is any of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, committed before June 1, 2002.

(ii) A violation of section 145c(4), 167(1)(f), or 448 of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.167, and 750.448.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, other than a violation committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(iv) A violation of a local ordinance of a municipality substantially corresponding to a section described in subparagraph (i), (ii), or (iii).

(v) A violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age if the violation is not specifically designated a felony and is punishable by imprisonment for 1 year or less.

(vi) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (v).

(vii) An offense substantially similar to an offense described in subparagraphs (i) to (vi) under a law of the United States, any state, or any country or under tribal or military law.

(b) If the person is registered for 1 or more felony listed offenses, not earlier than the first day or later than the fifteenth day of each April, July, October, and January following initial verification or registration. As used in this subdivision, “felony listed offense” means a listed offense that is any of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a, committed on or after June 1, 2002.

(ii) A violation of section 145b, 145c(2) or (3), 349, 350, 455, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145b, 750.145c, 750.349, 750.350, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(iii) A violation of section 335a of the Michigan penal code, 1931 PA 328, MCL 750.335a, committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(iv) A violation of a law of this state that by its nature constitutes a sexual offense against an individual who is less than 18 years of age if the violation is specifically designated a felony or is punishable by imprisonment for more than 1 year.

(v) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (iv).

(vi) An offense substantially similar to an offense described in subparagraphs (i) to (v) under a law of the United States, any state, or any country or under tribal or military law.

(5) The continued reporting requirements of this section following initial registration do not apply to an individual convicted as a juvenile of committing an offense described in section 8c(15)(a) or (b) committed by the individual when he or she was less than 17 years of age, except that the individual shall report a change in his or her residence within this state or to another state as provided in this section within 10 days after the change of residence is made. If the individual fails to file a petition under section 8c before he or she becomes 18 years of age, or if his or her petition is denied by the court, the individual shall report as otherwise required under this section.

(6) When an individual reports under subsection (3) or (4), an officer or authorized employee of the local law enforcement agency, sheriff’s department, or department post shall verify the individual’s residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall sign and date a verification form. The officer shall give a copy of the signed form showing the date of verification to the individual. The officer or employee shall forward verification information to the department by the law enforcement information network in the manner the department prescribes. The department shall revise the databases maintained under section 8 as necessary and shall indicate verification in the compilation under section 8(2).

(7) Except as otherwise provided in section 5b, beginning October 16, 2004, an individual who reports as prescribed under subsection (3) or (4) and who has not already

paid the fee prescribed under section 7(1) shall pay a \$35.00 registration fee. An individual shall only be required to pay a fee once under this subsection.

(8) An individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence.

(9) Not earlier than January 1, 2000 or later than January 15, 2000, an individual registered under this act who is not incarcerated shall report in person to a secretary of state office and have his or her digitized photograph taken. An individual registered under this act who is incarcerated on January 15, 2000 shall report under this subsection not less than 10 days after he or she is released. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released. The photograph shall be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken when he or she renews the license or identification card as provided by law. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(10) If an individual does not report under subsection (3) or (4) or section 4a, the department shall notify the local law enforcement agency, sheriff's department, or department post. An appearance ticket may be issued for the individual's failure to report as provided in sections 9a to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(11) The department shall prescribe the form for the notices and verification procedures required under this section.

### **28.728 Database; compilation; availability.**

Sec. 8. (1) The department shall maintain a computerized database of registrations and notices required under this act.

(2) The department shall maintain a computerized database separate from that described in subsection (1) to implement section 10(2) and (3). Except as provided in subsection (3), the database shall consist of a compilation of individuals registered under this act.

(3) The database described in subsection (2) shall not include the following individuals:

(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. Except as provided in subdivision (b), the exclusion for juvenile dispositions does not apply to a disposition for a violation of section 520b or 520c of the Michigan penal code, 1931 PA 328, MCL 750.520b and 750.520c, after the individual becomes 18 years of age.

(b) An individual who is exempt under section 8d from that database.

(4) The compilation of individuals shall be indexed numerically by zip code area. Within each zip code area, the compilation shall contain all of the following information:

(a) The name and aliases, address, physical description, and birth date of each individual registered under this act who is included in the compilation and who resides in that zip code area and any listed offense of which the individual has been convicted.

(b) The name and campus location of each institution of higher education to which the individual is required to report under section 4a.

(c) Beginning May 1, 2005, the photograph of each individual registered under this act. The department shall obtain the photographs submitted under section 5a from the secretary of state for purposes of implementing this subdivision.

(5) The department shall update the compilation with new registrations, deletions from registrations, and address changes at the same time those changes are made to the database described in subsection (1). The department shall make the compilation available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the compilation in printed form for the zip code areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a computerized search of the compilation based upon the name and campus location of an institution of higher education described in subsection (4)(b).

(6) The department shall make the compilation or information from the compilation available to a department post, local law enforcement agency, sheriff's department, and the public by electronic, computerized, or other similar means accessible to the post, agency, or sheriff's department. The electronic, computerized, or other similar means shall provide for both a search by name and by zip code.

(7) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act, including names and aliases, addresses, physical descriptions, or dates of birth, violates the constitution of the United States or this state, the department shall revise the compilation in subsection (2) so that it does not contain that information.

**28.728c Individual convicted of violation described in subsection (15); petition; jurisdiction; limitations; oath; contents; false statement; filing copy with office of prosecution; notice; entry on database; hearing; rights of victim; factors in court determination; court order; individuals with right to petition.**

Sec. 8c. (1) An individual described in subsection (15) who is convicted before October 1, 2004 of a violation described in that subsection may petition the court under this section for an order allowing him or her to register under this act as provided in section 8d(1).

(2) An individual described in subsection (15)(a) or (b) who is convicted on or after October 1, 2004 of a violation described in that subsection may petition the court under this section for an order allowing him or her to register under this act as provided in section 8d(1).

(3) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule.

(4) A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. A petition filed under subsection (1) shall be filed before October 1, 2007 or within 3 years after the individual is discharged from the jurisdiction of the juvenile court or, if the individual was assigned to youthful trainee status, within 3 years after he or she has successfully completed youthful trainee status, whichever is later, and, except as otherwise provided in this subsection, the court shall not consider a petition filed by the individual after that date. A petition filed under subsection (2) shall not be filed before the individual's seventeenth birthday or after the individual's twentieth birthday. If the individual is charged in this state or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the felony for which he or she has filed the petition for registration as provided under section 8d, or an offense that if committed by an adult would be a felony, the court may hold the petition in abeyance until the charges are finally disposed of. If the court holds the petition in abeyance, the 3-year limitation periods described in this subsection begin to run when the period of abeyance has ended. A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing. As used in this subsection, "felony" means a crime that is specifically designated to be a felony or that is punishable by imprisonment for more than 1 year.

(5) A petition filed under this section shall be made under oath and shall contain all of the following:

(a) The name and address of the petitioner.

(b) A statement identifying the offense for which registration as provided in section 8d is being requested.

(c) A statement of whether the individual was previously convicted of a listed offense for which registration is required under this act.

(d) A statement specifically stating that the individual is not disqualified under subsection (14) from filing a petition under this section.

(6) An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.

(7) A copy of the petition shall be filed with the office of the prosecuting attorney that prosecuted the case against the individual at least 30 days before a hearing is held on the petition. The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition.

(8) If the name of the victim of the offense is known by the prosecuting attorney, the prosecuting attorney shall provide the victim with written notice that a petition has been filed and shall provide the victim with a copy of the petition. The notice shall be sent by first-class mail to the victim's last known address. The petition shall include a statement of the victim's rights under subsection (11).

(9) If an individual petitions the court under subsection (1) or (2) for an offense described in subsection (15)(a) or (b) and the individual is not on the database maintained under section 8(2) at the time the petition is filed, the court may order the department not to place the individual on that database during the period in which the court is considering whether to grant the petition as follows:

(a) Except as provided in subdivision (b), for a period of 30 days after the date the order is issued or as provided by the court, whichever occurs first.

(b) If jurisdiction is continued by the court past the individual's seventeenth birthday, during the period in which jurisdiction is continued. The court shall notify the department of the order as required under section 8d.

(10) If an individual properly files a petition with the court under this section, the court shall conduct a hearing on the petition as provided in this section.

(11) The victim has the right to attend all proceedings under this section and to make a written or oral statement to the court before any decision regarding the petition is made. A victim shall not be required to appear at any proceeding under this section against his or her will.

(12) The court shall consider all of the following in determining whether to allow the individual to register under this act as provided in section 8d:

(a) The individual's age and level of maturity at the time of the offense.

(b) The victim's age and level of maturity at the time of the offense.

(c) The nature of the offense.

(d) The severity of the offense.

(e) The individual's prior juvenile or criminal history.

(f) The individual's likelihood to commit further listed offenses.

(g) Any impact statement submitted by the victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

(h) Any other information considered relevant by the court.

(13) If the court determines that the individual meets the criteria for registration under section 8d, the court may order the individual to register under this act as provided in that section.

(14) The court shall not grant a petition filed under this section if any of the following apply:

(a) The individual was previously convicted of a listed offense for which registration is required under this act.

(b) The individual fails to carry the burden of proving by clear and convincing evidence that he or she is not likely to commit further listed offenses.

(c) The court determines that the offense involved any of the following:

(i) A factor set forth in section 520b(1)(b) to (h) of the Michigan penal code, 1931 PA 328, MCL 750.520b.

(ii) A factor set forth in section 520c(1)(b) to (l) of the Michigan penal code, 1931 PA 328, MCL 750.520c.

(iii) A factor set forth in section 520d(1)(b) to (e) of the Michigan penal code, 1931 PA 328, MCL 750.520d.

(iv) A factor set forth in section 520e(1)(b) to (f) of the Michigan penal code, 1931 PA 328, MCL 750.520e.

(d) The individual is charged in this state or elsewhere with committing, attempting to commit, or conspiring to commit a felony, other than the felony for which he or she has filed the petition for registration as provided under section 8d, or an offense that if committed by an adult would be a felony. This subsection does not prohibit the court from holding the petition in abeyance under subsection (4). As used in this subdivision, "felony" means a crime specifically designated to be a felony or that is punishable by imprisonment for more than 1 year.

(e) The individual was sentenced for the offense as an adult. This subdivision does not apply to an individual described in subsection (15)(c) who successfully completed his or her probationary period and was discharged from youthful trainee status.

(15) The right to petition under this section applies to all of the following individuals:

(a) An individual who is convicted as a juvenile under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, of committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if either of the following applies:

(i) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.

(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(b) An individual who was charged under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, with committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if either of the following applies:

(i) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.

(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(c) An individual who has successfully completed his or her probationary period under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, for committing a listed offense, and has been discharged from youthful trainee status.

### **28.728d Court order granting petition.**

Sec. 8d. (1) An individual who petitions the court under section 8c to register as provided in this section shall register under this act as follows:

(a) For a violation described in section 8c(15)(a) or (b), the individual shall register under this act until the petition is granted but is not subject to the requirements of section 8(2).

(b) For a violation described in section 8c(15)(c) and for which the petition is granted, the individual shall register under this act for a period of 10 years after the date he or she initially registered or, if the individual was in a state correctional facility, for 10 years after he or she is released from that facility, whichever is greater, and is subject to the requirements of section 8(2) during that registration period.

(2) If the court under section 8c orders an individual to register under this section pending the court's determination of the petition, the court shall promptly provide a copy of that order to the department and to the individual. If the department is provided with an order under this subsection for an individual described in section 8c(15)(a) or (b), the department shall not enter the individual's registration into the database maintained under section 8(2) until ordered by the court to do so or until expiration of the order, whichever occurs first.

(3) If the court grants a petition filed under section 8c, the court shall promptly provide a copy of that order to the department and to the individual. If the department is provided with an order under this subsection for a violation described in section 8c(15)(a) or (b), the department shall not enter the individual's registration into the database maintained under section 8(2) or, if the person is already registered, shall promptly remove that registration from the database maintained under section 8(2). The department shall promptly remove an individual's registration from the database maintained under section 8(1) upon expiration of the applicable registration period described in subsection (1) or (2) as provided in those subsections.

**28.730 Confidentiality; exemption from disclosure; availability of information from compilation; violation as misdemeanor; penalty; civil cause of action; applicability of subsections (4) and (5) to compilation.**

Sec. 10. (1) Except as provided in this act, a registration or report is confidential and information from that registration or report shall not be open to inspection except for law enforcement purposes. The registration or report and all included materials and information are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(2) A department post, local law enforcement agency, or sheriff's department shall make information from the compilation described in section 8(2) for the zip code areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction available for public inspection during regular business hours. A department post, local law enforcement agency, or sheriff's department is not required to make a copy of the information for a member of the public.

(3) The department may make information from the compilation described in section 8(2) available to the public through electronic, computerized, or other accessible means.

(4) Except as provided in this act, an individual other than the registrant who knows of a registration or report under this act and who divulges, uses, or publishes nonpublic information concerning the registration or report in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(5) An individual whose registration or report is revealed in violation of this act has a civil cause of action against the responsible party for treble damages.

(6) Subsections (4) and (5) do not apply to the compilation described in section 8(2) or information from that compilation that is provided or made available under section 8(2) or under subsection (2) or (3).

**Repeal of MCL 28.728a and 28.728b.**

Enacting section 1. Sections 8a and 8b of the sex offenders registration act, 1994 PA 295, MCL 28.728a and 28.728b, are repealed.

**Effective date.**

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

**Conditional effective date.**

Enacting section 3. 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. 1167.
- (b) House Bill No. 5195.
- (c) House Bill No. 5240.

This act is ordered to take immediate effect.

Approved July 21, 2004.

Filed with Secretary of State July 21, 2004.

---

**Compiler's note:** The bills referred to in enacting section 3 were enacted into law as follows:

Senate Bill No. 1167 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 237, Eff. Oct. 16, 2004.

House Bill No. 5195 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 238, Eff. May 1, 2005.

House Bill No. 5240 was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 239, Eff. Oct. 1, 2004.

**[No. 241]****(SB 1025)**

AN ACT to establish the computer crime of sending certain electronic messages to minors; to create a child protection registry; to provide notice of contact points to which a minor has access; to prescribe the powers and duties of certain state agencies and officials; to create a fund and provide for fees; and to provide for penalties and remedies.

*The People of the State of Michigan enact:*

**752.1061 Short title.**

Sec. 1. This act shall be known and may be cited as the “Michigan children’s protection registry act”.

**752.1062 Definitions.**

Sec. 2. As used in this act:

(a) “Contact point” means any electronic identification to which messages can be sent, including any of the following:

(i) An instant message identity.

(ii) A wireless telephone, a personal digital assistant, a pager number, or any other similar wireless communication device.

(iii) A facsimile number.

(iv) An electronic mail address.

(v) Other electronic addresses subject to rules promulgated under this act by the department.

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

(c) “Internet domain name” means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(d) “Minor” means an individual under the age of 18 years.

(e) “Person” means an individual, corporation, association, partnership, or any other legal entity.

(f) “Registry” means the child protection registry created under section 3.

**752.1063 Child protection registry; establishment and operation; registration of contact points; fees; children’s protection registry fund; creation as separate fund; prohibited conduct; violation of act as computer crime; civil action; investigation by attorney general; civil penalties; effective date of section.**

Sec. 3. (1) The department shall establish and operate, or contract with a qualified third party to establish and operate, the child protection registry. The department or a third party administrator shall establish procedures, to the extent possible, to prevent the use or disclosure of protected contact points as required under section 6. If the department elects to contract with a third party, the department shall give due consideration to any person located in this state.

(2) A parent, guardian, individual, or an entity under subsection (4) who is responsible for a contact point to which a minor may have access may register that contact point with

the department under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall establish procedures to ensure that a registrant meets the requirements of this subsection.

(3) A registration under this section shall be for not more than 3 years. If the contact point is established for a specific minor, the registration expires the year the minor turns 18 years of age. A registration can be revoked or renewed by the registrant upon notification to the department.

(4) Schools and other institutions or entities primarily serving minor children may register 1 or more contact points with the department. An entity under this subsection may make 1 registration for all contact points of the entity, and the registration may include the entity's internet domain name under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) No fee or charge shall be assessed or incurred by a person registering a contact point under this act.

(6) The department shall establish a mechanism for senders to verify compliance with the registry.

(7) A person desiring to send a message described in section 5 shall pay the department a fee for access to the mechanism required under subsection (6). The fee required under this subsection shall be set by the department. The fee shall not exceed .03 cents and shall be based on the number of contact points checked against the registry for each time a contact point is checked. The mechanism to verify compliance under subsection (6) and the fee required under this subsection shall be established under rules promulgated by the department under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) The fees collected under this act shall be credited to the following:

(a) Eighty-five percent of the fees to the fund created under section 4.

(b) Not less than 15% of the fees to the attorney general to cover the costs of investigating, enforcing, and defending this act and section 5a of 1979 PA 53, MCL 752.795a. The department may reimburse the attorney general from the fund created under section 4 for any costs incurred under this subdivision that exceed the fees credited under this subdivision.

(9) The registry shall be fully operational not later than July 1, 2005.

#### **752.1064 Children's protection registry fund; creation; expenditures; reversion to general fund.**

Sec. 4. (1) The children's protection registry fund is created as a separate fund in the state treasury and administered by the department. Money shall be deposited into the fund as required by section 3(8)(a).

(2) The department shall expend money from the fund only for the purposes of administering this act and for the investigation, enforcement, and defense of this act and section 5a of 1979 PA 53, MCL 752.795a.

(3) All money, including interest and earnings, in the fund at the end of the fiscal year shall remain in the fund and not revert to the general fund.

#### **752.1065 Prohibited conduct; exception.**

Sec. 5. (1) A person shall not send, cause to be sent, or conspire with a third party to send a message to a contact point that has been registered for more than 30 calendar days with the department if the primary purpose of the message is to, directly or indirectly, advertise

or otherwise link to a message that advertises a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.

(2) A person desiring to send a message described in subsection (1) shall use the mechanism created under section 3(6) to ensure compliance with this act.

(3) The consent of a minor or third party to receive the message is not a defense to a violation of this section.

(4) A person does not violate this act because the person is an intermediary between the sender and recipient in the transmission of an electronic message that violates this act or unknowingly provides transmission of electronic messages over the person's computer network or facilities that violate this act.

(5) The sending of a message described in subsection (1) is prohibited only if it is otherwise a crime for the minor to purchase, view, possess, participate in, or otherwise receive the product or service.

### **752.1066 Release of information; prohibitions; register not subject to freedom of information act.**

Sec. 6. (1) A person shall not release to another person information concerning persons or provide access to contact points or other information contained on the registry except as provided by this act.

(2) A person shall not sell or use the registry for any reason other than to meet the requirements of this act.

(3) A person shall not access or attempt to access the registry except as provided by this act.

(4) The registry created under this act is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

### **752.1067 Violation of act; penalties.**

Sec. 7. A violation of this act is a computer crime and a violation of section 5a of 1979 PA 53, MCL 752.795a, subject to the penalties provided for under sections 6a and 6b of 1979 PA 53, MCL 752.796a and 752.796b.

### **752.1068 Civil action; attorney fees; remedies; investigation of business transactions; effective date of section.**

Sec. 8. (1) A civil action based on the computer crime established under this act may be brought by an authorized individual or the registrant of the contact point on behalf of a minor who has received a message in violation of this act.

(2) A civil action based on the computer crime established under this act may be brought by a person through whose facilities the message was transmitted in violation of this act.

(3) A civil action based on the computer crime established under this act may be brought by the attorney general against a person who has violated this act.

(4) In each action brought under this section, the prevailing party may be awarded reasonable attorney fees if the action is found by the court to be frivolous.

(5) A person bringing an action under this section may recover 1 of the following:

(a) Actual damages, including reasonable attorney fees.

(b) In lieu of actual damages, recover the lesser of the following:

(i) \$5,000.00 per each message received by a recipient or transmitted.

(ii) \$250,000.00 for each day that the violation occurs.