

(4) Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

### **324.63217 Nonferrous metallic mineral surveillance fund.**

Sec. 63217. (1) The nonferrous metallic mineral surveillance fund is created within the state treasury.

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

(3) Unexpended money in the fund at the close of the fiscal year shall remain in the fund and be carried over to the succeeding fiscal year.

(4) The department shall expend money from the fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part.

### **324.63219 Contested case hearing.**

Sec. 63219. (1) A person who is aggrieved by an order, action, or inaction of the department or by the issuance, denial, revocation, or amendment of a mining permit under this part may file a petition with the department requesting a contested case hearing, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after an order, action, or inaction of the department or an action on a mining permit may be rejected as being untimely.

(2) Any hearing under this part shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall provide notice of the hearing and shall mail copies of the notice to the person requesting the hearing and to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The department shall publish notice of the hearing in a newspaper of local distribution in the area of the mining operation at least 10 days before the hearing.

### **324.63221 Violations.**

Sec. 63221. (1) If the department determines that an operator has violated this part, a rule promulgated under this part, or a mining permit issued under this part, the department shall require the operator to correct the violation.

(2) If the department determines that a violation under subsection (1) is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include 1 or more of the following:

(a) Revoking the mining permit.

(b) Issuing an order to the operator requiring immediate suspension of activities at the mining operation, including the removal of metallic product from the site.

(c) Issuing an order to the operator to undertake such other response actions as may be necessary to abate or eliminate the endangerment.

(3) Before taking action under this section to suspend operations or revoke a mining permit, or to otherwise prevent the continuation of mining operations, the department shall give written notice, in person or by mail, to the operator. Subject to subsection (4), the department shall provide the operator an opportunity for an evidentiary hearing.

(4) If the department finds that emergency action is required to protect the public health, safety, or welfare, or to protect the environment, the department may issue an

emergency order without a public hearing to require an operator to suspend operations or to take other corrective actions. An emergency order shall remain in force and effect for not more than 21 days.

(5) If the operator or surety fails or neglects to correct the violation or take corrective actions as specified under an order of the department, the department may, after giving written notice to the operator and surety, enter in or upon the mining area and upon and across any private or public property necessary to reach the mining area and take whatever action is necessary to curtail and remediate any damage to the environment and public health resulting from the violation, and the operator and surety are jointly and severally liable for all expenses incurred by the department. The claim shall be paid by the operator or surety within 30 days, and, if the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction. This part does not limit the department's authority to take whatever response activities it determines necessary to protect the public health, safety, and welfare and the environment.

(6) The revocation of a mining permit or suspension of activities under subsection (2) does not relieve a permittee of the responsibility to complete reclamation, maintain financial assurance required under section 63211, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

(7) If the department receives an allegation of improper action under or a violation of this part, a rule promulgated under this part, or a condition of a permit issued under this part, and the person making the allegation provides evidence or corroboration sufficient to support the allegation, as determined by the department, the department shall do all of the following:

(a) Make a record of the allegation.

(b) Conduct an inspection of the mining operation to investigate the allegation not more than 5 business days after receipt of the complaint or allegation. If the complaint or allegation is of a highly serious nature, as determined by the department, the mining operation shall be inspected as quickly as possible. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(c) Not more than 15 business days after completing an investigation of the allegation, make a written report of the allegation and the results of the investigation to the operator and the person who made the allegation.

(8) The department shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in its actions under this section.

**324.63223 Civil action; commencement; jurisdiction; relief; fine; violation as felony; penalties; lien.**

Sec. 63223. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not less than \$2,500.00, and the court may award reasonable attorney fees and costs to the

prevailing party. The maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(2) Upon a finding by the court that an operator has violated this part or a provision of a permit or order issued or rule promulgated under this part, and that the violation poses or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the sanctions set forth in subsection (1), a fine of not less than \$500,000.00 and not more than \$5,000,000.00.

(3) The attorney general may file a civil suit in a court of competent jurisdiction to recover, in addition to a fine, the full value of the injuries done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation.

(4) A person who on or after February 1, 2005 intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit under this part or in a notice or report required by the terms and conditions of a permit issued under this part is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. Knowledge possessed by a person other than the defendant under this subsection may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(5) Upon a finding by the court that the actions taken by a criminal defendant on or after February 1, 2005 pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a sentence of 5 years' imprisonment and a fine of not less than \$1,000,000.00.

(6) To find a defendant civilly or criminally liable for substantial endangerment under subsection (2) or (5), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

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

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

(7) A civil fine or other civil award imposed under this section is payable to this state and shall be credited to the general fund. The fine constitutes a lien on any property, of any nature or kind, owned by the defendant.

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

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

(10) If a violation of this part also constitutes a violation of another part of this act, a court may apply a civil fine or penalty for the violation, and each day of continued violation, in accordance with and subject to the penalty limits of the other part.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 27, 2004.

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**[No. 450]**

**(SB 1387)**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” (MCL 600.101 to 600.9947) by adding section 2953a.

*The People of the State of Michigan enact:*

**600.2953a Motion picture recording violation.**

Sec. 2953a. (1) A person who commits an act that constitutes a motion picture recording violation is liable to a person injured by the violation for 1 or more of the following:

(a) Actual damages.

(b) Exemplary damages of not more than \$1,000.00.

(c) If the person who committed the violation was acting for direct or indirect commercial advantage or financial gain, exemplary damages of not more than \$50,000.00.

(d) Reasonable attorney fees and costs.

(2) If a person who commits an act that constitutes a motion picture recording violation is an unemancipated minor who lives with his or her parent or parents, the parent or parents are also liable to a person injured by the violation for damages allowable under this section.

(3) A person injured by a motion picture recording violation may recover damages described in subsection (1) only if a formal incident report that contains factual allegations that the defendant committed a motion picture recording violation is filed with a local law enforcement agency with jurisdiction over the location where the violation took place. However, recovery under this section is not dependent on the outcome of a criminal prosecution.

(4) A person injured by a motion picture recording violation may bring an action to enjoin a person from the unauthorized recording, receipt, or transmission of a recording or transmission of a motion picture or a part of a motion picture obtained or made by a motion picture recording violation or from committing a motion picture recording violation.

A person may bring an action under this subsection regardless of whether the person has suffered or will suffer actual damages.

(5) An action under this section is in addition to any other criminal or civil penalties or remedies provided by law.

(6) As used in this section:

(a) “Motion picture recording violation” means a violation of section 465a of the Michigan penal code, 1931 PA 328, MCL 750.465a.

(b) “A person injured by a motion picture recording violation” includes, but is not limited to, the owner or lessee of the theatrical facility where the motion picture that is the subject of the violation was being shown.

### **Effective date.**

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

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5347 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**Compiler's note:** House Bill No. 5347, referred to in enacting section 2, was filed with the Secretary of State December 15, 2004, and became P.A. 2004, No. 423, Eff. Mar. 15, 2005.

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## **[No. 451]**

### **(SB 1386)**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” (MCL 600.101 to 600.9947) by adding section 2917a.

*The People of the State of Michigan enact:*

### **600.2917a Detention of individual believed by owner or lessee of theatrical facility to have violated MCL 750.465a.**

Sec. 2917a. The owner or lessee of a theatrical facility where a motion picture is being exhibited or the authorized agent or employee of the owner or lessee who alerts a law enforcement agency of an alleged violation of section 465a of the Michigan penal code, 1931 PA 328, MCL 750.465a, and who takes measures, while awaiting the arrival of law enforcement authorities, to detain an individual who the owner, lessee, agent, or employee

has probable cause to believe committed the violation is not liable in a civil action arising out of the measures taken unless the plaintiff shows that 1 or both of the following apply:

- (a) The measures taken were unreasonable.
- (b) The period of detention was unreasonably long.

**Effective date.**

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

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5347 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 21, 2004.

Filed with Secretary of State December 28, 2004.

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**Compiler's note:** House Bill No. 5347, referred to in enacting section 2, was filed with the Secretary of State December 15, 2004, and became P.A. 2004, No. 423, Eff. Mar. 15, 2005.

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**[No. 452]**

**(SB 792)**

AN ACT to prohibit certain acts and practices concerning identity theft; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**445.61 Short title.**

Sec. 1. This act shall be known and may be cited as the “identity theft protection act”.

**445.63 Definitions.**

Sec. 3. As used in this act:

(a) “Child or spousal support” means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

- (i) Expenses for day-to-day care.
- (ii) Medical, dental, or other health care.
- (iii) Child care expenses.
- (iv) Educational expenses.

(v) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vii) A surcharge as provided by section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(b) “Credit card” means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(c) “Depository institution” means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

(d) “Financial institution” means a depository institution, an affiliate of a depository institution, a licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or a person subject to subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

(e) “Financial transaction device” means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(f) “Identity theft” means engaging in an act or conduct prohibited in section 5(1).

(g) “Law enforcement agency” means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(h) “Local registrar” means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(i) “Medical records or information” includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(j) “Person” means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(k) “Personal identifying information” means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person’s financial accounts, including, but not limited to, a person’s name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother’s maiden name, demand deposit account number, savings account number, financial transaction device account number or the person’s account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

(l) “State registrar” means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(m) “Trade or commerce” means that term as defined in section 2 of the Michigan consumer protection act, 1971 PA 331, MCL 445.902.

(n) “Vital record” means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

#### **445.65 Prohibited acts; violations; defense in civil action or criminal prosecution; burden of proof.**

Sec. 5. (1) A person shall not do any of the following:

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, medical records or information, or employment.

(ii) Commit another unlawful act.

(b) By concealing, withholding, or misrepresenting the person's identity, use or attempt to use the personal identifying information of another person to do either of the following:

(i) Obtain credit, goods, services, money, property, a vital record, medical records or information, or employment.

(ii) Commit another unlawful act.

(2) A person who violates subsection (1)(b)(i) may assert 1 or more of the following as a defense in a civil action or as an affirmative defense in a criminal prosecution, and has the burden of proof on that defense by a preponderance of the evidence:

(a) That the person gave a bona fide gift for or for the benefit or control of, or use or consumption by, the person whose personal identifying information was used.

(b) That the person acted in otherwise lawful pursuit or enforcement of a person's legal rights, including an investigation of a crime or an audit, collection, investigation, or transfer of a debt, child or spousal support obligation, tax liability, claim, receivable, account, or interest in a receivable or account.

(c) That the action taken was authorized or required by state or federal law, rule, regulation, or court order or rule.

(d) That the person acted with the consent of the person whose personal identifying information was used, unless the person giving consent knows that the information will be used to commit an unlawful act.

#### **445.67 Additional prohibited acts.**

Sec. 7. A person shall not do any of the following:

(a) Obtain or possess, or attempt to obtain or possess, personal identifying information of another person with the intent to use that information to commit identity theft or another crime.

(b) Sell or transfer, or attempt to sell or transfer, personal identifying information of another person if the person knows or has reason to know that the specific intended recipient will use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime.

(c) Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft.

#### **445.69 Certain violations as felony; penalty; consecutive sentences; defense in civil action or criminal prosecution; burden of proof; exception.**

Sec. 9. (1) Subject to subsection (6), a person who violates section 5 or 7 is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$25,000.00, or both.

(2) Sections 5 and 7 apply whether an individual who is a victim or intended victim of a violation of 1 of those sections is alive or deceased at the time of the violation.

(3) This section does not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(4) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for a conviction of any other



violation of law committed by that person using the information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(5) A person may assert as a defense in a civil action or as an affirmative defense in a criminal prosecution for a violation of section 5 or 7, and has the burden of proof on that defense by a preponderance of the evidence, that the person lawfully transferred, obtained, or attempted to obtain personal identifying information of another person for the purpose of detecting, preventing, or deterring identity theft or another crime or the funding of a criminal activity.

(6) Subsection (1) does not apply to a violation of a statute or rule administered by a regulatory board, commission, or officer acting under authority of this state or the United States that confers primary jurisdiction on that regulatory board, commission, or officer to authorize, prohibit, or regulate the transactions and conduct of that person, including, but not limited to, a state or federal statute or rule governing a financial institution and the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, if the act is committed by a person subject to and regulated by that statute or rule, or by another person who has contracted with that person to use personal identifying information.

#### **445.71 Prohibited acts in conduct of trade or commerce; violation as misdemeanor.**

Sec. 11. (1) A person shall not do any of the following in the conduct of trade or commerce:

(a) Deny credit or public utility service to or reduce the credit limit of a consumer solely because the consumer was a victim of identity theft, if the person had prior knowledge that the consumer was a victim of identity theft. A consumer is presumed to be a victim of identity theft for the purposes of this subdivision if he or she provides both of the following to the person:

(i) A copy of a police report evidencing the claim of the victim of identity theft.

(ii) Either a properly completed copy of a standardized affidavit of identity theft developed and made available by the federal trade commission pursuant to 15 USC 1681g or an affidavit of fact that is acceptable to the person for that purpose.

(b) Solicit to extend credit to a consumer who does not have an existing line of credit, or has not had or applied for a line of credit within the preceding year, through the use of an unsolicited check that includes personal identifying information other than the recipient's name, address, and a partial, encoded, or truncated personal identifying number. In addition to any other penalty or remedy under this act or the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for the amount of the instrument if the instrument is used by an unauthorized user and for any fees assessed to the consumer if the instrument is dishonored.

(c) Solicit to extend credit to a consumer who does not have a current credit card, or has not had or applied for a credit card within the preceding year, through the use of an unsolicited credit card sent to the consumer. In addition to any other penalty or remedy under this act or the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for any charges if the credit card is used by an unauthorized user and for any interest or finance charges assessed to the consumer.

(d) Extend credit to a consumer without exercising reasonable procedures to verify the identity of that consumer. Compliance with regulations issued for depository institutions,

and to be issued for other financial institutions, by the United States department of treasury under section 326 of the USA patriot act of 2001, 31 USC 5318, is considered compliance with this subdivision. This subdivision does not apply to a purchase of a credit obligation in an acquisition, merger, purchase of assets, or assumption of liabilities or any change to or review of an existing credit account.

(2) A person who knowingly or intentionally violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000.00, or both. This subsection does not affect the availability of any civil remedy for a violation of this act, the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or any other state or federal law.

#### **445.73 Verification of information; use of vital record.**

Sec. 13. (1) A law enforcement agency or victim of identity theft may verify information from a vital record from a local registrar or the state registrar in the manner described in section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881.

(2) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for a law enforcement agency investigating identity theft may provide that law enforcement agency with all of the following information about any previous requests concerning that public record that is available to the registrar:

- (a) Whether or not a certified copy or copies of the record were requested.
- (b) The date or dates a copy or copies of the record were issued.
- (c) The name of each applicant who requested the record.
- (d) The address, e-mail address, telephone number, and other identifying information of each applicant who requested the record.
- (e) Payment information regarding each request.

(3) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for an individual who provides proof that he or she is a victim of identity theft may provide that individual with all of the following information about any previous requests concerning that public record that is available to the registrar:

- (a) Whether or not a certified copy or copies of the record were requested.
- (b) The date or dates a copy or copies of the record were issued.

(4) For purposes of subsection (3), it is sufficient proof that an individual is a victim of identity theft for a state registrar or local registrar to provide the information described in that subsection if he or she provides the registrar with a copy of a police report evidencing the claim that he or she is a victim of identity theft; and, if available, an affidavit of identity theft, in a form developed by the state registrar in cooperation with the attorney general for purposes of this subsection.

(5) A law enforcement agency may request an administrative use copy of a vital record from the state registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891.

(6) A law enforcement agency may request an administrative use copy of a vital record from a local registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891, if the request for the administrative use copy is in writing and contains both of the following:

- (a) A statement that the law enforcement agency requires information from a vital record beyond the information the local registrar may verify under subsections (1) and (2).

(b) The agreement of the law enforcement agency that it will maintain the administrative use copy of the vital record in a secure location and will destroy the copy by confidential means when it no longer needs the copy.

#### **445.75 Repeal of MCL 750.285.**

Sec. 15. Section 285 of the Michigan penal code, 1931 PA 328, MCL 750.285, is repealed.

#### **445.77 Effective date.**

Sec. 17. This act takes effect March 1, 2005.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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### **[No. 453]**

#### **(SB 793)**

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,” (MCL 760.1 to 777.69) by adding section 10c to chapter II.

*The People of the State of Michigan enact:*

## CHAPTER II

#### **762.10c Identity theft; prosecution; jurisdiction.**

Sec. 10c. (1) Conduct prohibited under former section 285 of the Michigan penal code, 1931 PA 328, or a violation of the identity theft protection act, or a violation of law

committed in furtherance of or arising from the same transaction as conduct prohibited under former section 285 of the Michigan penal code, 1931 PA 328, or a violation of the identity theft protection act, may be prosecuted in 1 of the following jurisdictions:

- (a) The jurisdiction in which the offense occurred.
  - (b) The jurisdiction in which the information used to commit the violation was illegally used.
  - (c) The jurisdiction in which the victim resides.
- (2) If a person is charged with more than 1 violation of the identity theft protection act and those violations may be prosecuted in more than 1 jurisdiction, any of those jurisdictions is a proper jurisdiction for all of the violations.

**Effective date.**

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

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 792 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**Compiler's note:** Senate Bill No. 792, referred to in enacting section 2, was filed with the Secretary of State December 28, 2004, and became P.A. 2004, No. 452, Eff. Mar. 1, 2005.

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**[No. 454]****(SB 795)**

AN ACT to establish the social security number privacy act in the state of Michigan; to prescribe penalties; and to provide remedies.

*The People of the State of Michigan enact:*

**445.81 Short title.**

Sec. 1. This act shall be known and may be cited as the “social security number privacy act”.

**445.82 Definitions.**

Sec. 2. As used in this act:

(a) “Child or spousal support” means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

- (i) Expenses for day-to-day care.
- (ii) Medical, dental, or other health care.
- (iii) Child care expenses.
- (iv) Educational expenses.

(v) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vii) A surcharge paid under section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(b) “Computer”, “computer network”, or “computer system” mean those terms as defined in section 2 of 1979 PA 53, MCL 752.792.

(c) “Internet” means that term as defined in 47 U.S.C. 230.

(d) “Mailed” means delivered by United States mail or other delivery service that does not require the signature of recipient indicating actual receipt.

(e) “Person” means an individual, partnership, limited liability company, association, corporation, public or nonpublic elementary or secondary school, trade school, vocational school, community or junior college, college, university, state or local governmental agency or department, or other legal entity.

(d) “Publicly display” means to exhibit, hold up, post, or make visible or set out for open view, including, but not limited to, open view on a computer device, computer network, website, or other electronic medium or device, to members of the public or in a public manner. The term does not include conduct described in section 3(1)(b), (c), or (f).

(e) “Title IV-D agency” means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(f) “Vital record” means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(g) “Website” means a collection of pages of the world wide web or internet, usually in HTML format, with clickable or hypertext links to enable navigation from one page or section to another, that often uses associated graphics files to provide illustration and may contain other clickable or hypertext links.

#### **445.83 Prohibited use of social security number of employee, student, or other individual; exceptions.**

Sec. 3. (1) Except as provided in subsection (2), a person shall not intentionally do any of the following with the social security number of an employee, student, or other individual:

(a) Publicly display all or more than 4 sequential digits of the social security number.

(b) Subject to subsection (3), use all or more than 4 sequential digits of the social security number as the primary account number for an individual. However, if the person is using the social security number under subdivision (c) and as the primary account number on the effective date of this act, this subdivision does not apply to that person until January 1, 2006.

(c) Visibly print all or more than 4 sequential digits of the social security number on any identification badge or card, membership card, or permit or license. However, if a person has implemented or implements a plan or schedule that establishes a specific date by which it will comply with this subdivision, this subdivision does not apply to that person until January 1, 2006, or the completion date specified in that plan or schedule, whichever is earlier.

(d) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number over the internet or a computer system or network unless the connection is secure or the transmission is encrypted.

(e) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number to gain access to an internet website or a computer system or network unless the connection is secure, the transmission is encrypted, or a password or other unique personal identification number or other authentication device is also required to gain access to the internet website or computer system or network.

(f) Include all or more than 4 sequential digits of the social security number in or on any document or information mailed or otherwise sent to an individual if it is visible on or, without manipulation, from outside of the envelope or packaging.

(g) Subject to subsection (3), beginning January 1, 2006, include all or more than 4 sequential digits of the social security number in any document or information mailed to a person, unless any of the following apply:

(i) State or federal law, rule, regulation, or court order or rule authorizes, permits, or requires that a social security number appear in the document.

(ii) The document is sent as part of an application or enrollment process initiated by the individual.

(iii) The document is sent to establish, confirm the status of, service, amend, or terminate an account, contract, policy, or employee or health insurance benefit or to confirm the accuracy of a social security number of an individual who has an account, contract, policy, or employee or health insurance benefit.

(iv) The document or information is mailed by a public body under any of the following circumstances:

(A) The document or information is a public record and is mailed in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(B) The document or information is a copy of a public record filed or recorded with a county clerk or register of deeds office and is mailed by that office to a person entitled to receive that record.

(C) The document or information is a copy of a vital record recorded as provided by law and is mailed to a person entitled to receive that record.

(v) The document or information is mailed by or at the request of an individual whose social security number appears in the document or information or his or her parent or legal guardian.

(vi) The document or information is mailed in a manner or for a purpose consistent with subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809; with the health insurance portability and accountability act of 1996, Public Law 104-191; or with section 537 or 539 of the insurance code of 1956, 1956 PA 218, MCL 500.537 and 500.539.

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

(a) A use of all or more than 4 sequential digits of a social security number that is authorized or required by state or federal statute, rule, or regulation, by court order or rule, or pursuant to legal discovery or process.

(b) A use of all or more than 4 sequential digits of a social security number by a title IV-D agency, law enforcement agency, court, or prosecutor as part of a criminal investigation or prosecution, or providing all or more than 4 sequential digits of a social security

number to a title IV-D agency, law enforcement agency, court, or prosecutor as part of a criminal investigation or prosecution.

(3) It is not a violation of subsection (1)(b) or (g) to use all or more than 4 sequential digits of a social security number if the use is any of the following:

(a) An administrative use of all or more than 4 sequential digits of the social security number in the ordinary course of business, by a person or a vendor or contractor of a person, to do any of the following:

(i) Verify an individual's identity, identify an individual, or do another similar administrative purpose related to an account, transaction, product, service, or employment or proposed account, transaction, product, service, or employment.

(ii) Investigate an individual's claim, credit, criminal, or driving history.

(iii) Detect, prevent, or deter identity theft or another crime.

(iv) Lawfully pursue or enforce a person's legal rights, including, but not limited to, an audit, collection, investigation, or transfer of a tax, employee benefit, debt, claim, receivable, or account or an interest in a receivable or account.

(v) Lawfully investigate, collect, or enforce a child or spousal support obligation or tax liability.

(vi) Provide or administer employee or health insurance or membership benefits, claims, or retirement programs or to administer the ownership of shares of stock or other investments.

(b) A use of all or more than 4 sequential digits of a social security number as a primary account number that meets both of the following:

(i) The use began before the effective date of this act.

(ii) The use is ongoing, continuous, and in the ordinary course of business. If the use is stopped for any reason, this subdivision no longer applies.

#### **445.84 Privacy policy.**

Sec. 4. (1) Beginning January 1, 2006, a person who obtains 1 or more social security numbers in the ordinary course of business shall create a privacy policy that does at least all of the following concerning the social security numbers the person possesses or obtains:

(a) Ensures to the extent practicable the confidentiality of the social security numbers.

(b) Prohibits unlawful disclosure of the social security numbers.

(c) Limits who has access to information or documents that contain the social security numbers.

(d) Describes how to properly dispose of documents that contain the social security numbers.

(e) Establishes penalties for violation of the privacy policy.

(2) A person that creates a privacy policy under subsection (1) shall publish the privacy policy in an employee handbook, in a procedures manual, or in 1 or more similar documents, which may be made available electronically.

(3) This section does not apply to a person who possesses social security numbers in the ordinary course of business and in compliance with the fair credit reporting act, 15 USC 1681 to 1681v, or subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

**445.85 Exemption from disclosure.**

Sec. 5. All or more than 4 sequential digits of a social security number contained in a public record are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243.

**445.86 Violation of MCL 445.83 as misdemeanor; penalty; recovery of damages in civil action.**

Sec. 6. (1) A person who violates section 3 with knowledge that the person's conduct violates 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.

(2) An individual may bring a civil action against a person who violates section 3 and may recover actual damages. If the person knowingly violates section 3, an individual may recover actual damages or \$1,000.00, whichever is greater. If the person knowingly violates section 3, an individual may also recover reasonable attorney fees. Except for good cause, not later than 60 days before filing a civil action, an individual must make a written demand to the person for a violation of section 3 for the amount of his or her actual damages with reasonable documentation of the violation and the actual damages caused by the violation. This subsection does not apply to a person for conduct by an employee or agent of the person in violation of a privacy policy created pursuant to section 4 or in compliance with the fair credit reporting act, 15 USC 1681 to 1681v, or subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809, if the person has taken reasonable measures to enforce its policy and to correct and prevent the reoccurrence of any known violations.

**445.87 Effective date.**

Sec. 7. This act takes effect March 1, 2005.

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 455]****(SB 798)**

AN ACT to amend 1976 PA 331, entitled "An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties," by amending section 3 (MCL 445.903), as amended by 2002 PA 613.

*The People of the State of Michigan enact:*

**445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules.**

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.



(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(l) Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services "free" or "without charge", or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(i) Except as provided in subparagraph (ii), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(ii) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at

the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

- (i) Is written or printed in a bold type that is not smaller than 10-point.
- (ii) Fully describes the prize, including its cash value, won by the consumer.
- (iii) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.
- (iv) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) Denying credit or public utility service to, or reducing the credit limit of, a consumer who is a victim of identity theft under the identity theft protection act, if the person denying credit or public utility service to or reducing the credit limit of that consumer has prior knowledge that the consumer was a victim of identity theft. A person is presumed to be the victim of identity theft if he or she possesses a valid police report evidencing the claim of the victim of identity theft. "Identity theft" means that term as defined under the identity theft protection act.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

### **Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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## **[No. 456]**

### **(SB 1384)**

AN ACT to amend 1985 PA 87, entitled "An act to establish the rights of victims of crime and juvenile offenses; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies," (MCL 780.751 to 780.834) by adding sections 4a, 33b, and 64a.

*The People of the State of Michigan enact:*

### **780.754a Victim of identity theft; filing police report; jurisdiction; "identity theft" defined.**

Sec. 4a. (1) To facilitate compliance with 15 USC 1681g, a bona fide victim of identity theft is entitled to file a police report with a law enforcement agency in a jurisdiction

where the alleged violation of identity theft may be prosecuted as provided under section 10c of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a copy of that report from that law enforcement agency.

(2) As used in this section, “identity theft” means that term as defined in section 3 of the identity theft protection act.

**780.783b Victim of identity theft; filing police report; jurisdiction; “identity theft” defined.**

Sec. 33b. (1) To facilitate compliance with 15 USC 1681g, a bona fide victim of identity theft is entitled to file a police report with a law enforcement agency in a jurisdiction where the alleged violation of identity theft may be prosecuted as provided under section 10c of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a copy of that report from that law enforcement agency.

(2) As used in this section, “identity theft” means that term as defined in section 3 of the identity theft protection act.

**780.814a Victim of identity theft; filing police report; jurisdiction; “identity theft” defined.**

Sec. 64a. (1) To facilitate compliance with 15 USC 1681g, a bona fide victim of identity theft is entitled to file a police report with a law enforcement agency in a jurisdiction where the alleged violation of identity theft may be prosecuted as provided under section 10c of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.10c, and to obtain a copy of that report from that law enforcement agency.

(2) As used in this section, “identity theft” means that term as defined in section 3 of the identity theft protection act.

**Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 457]**

**(HB 6169)**

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 14h and 16o of chapter XVII (MCL 777.14h and 777.16o), section 14h as amended by 2003 PA 134 and section 16o as amended by 2000 PA 389.

*The People of the State of Michigan enact:*

#### CHAPTER XVII

### **777.14h Applicability of chapter to certain felonies; MCL 445.65 to 445.2507(2).**

Sec. 14h. This chapter applies to the following felonies enumerated in chapter 445 of the Michigan Compiled Laws:

| <b>M.C.L.</b> | <b>Category</b> | <b>Class</b> | <b>Description</b>                                                                                                                             | <b>Stat Max</b> |
|---------------|-----------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 445.65        | Pub ord         | E            | Identity theft                                                                                                                                 | 5               |
| 445.67        | Pub ord         | E            | Obtain, possess, sell, or transfer personal identifying information of another or falsify a police report with intent to commit identity theft | 5               |
| 445.487(2)    | Pub ord         | H            | Precious metal and gem dealer failure to record material matter — subsequent offense                                                           | 2               |
| 445.488(2)    | Pub ord         | H            | Precious metal and gem dealer violations — subsequent offense                                                                                  | 2               |
| 445.489       | Pub ord         | H            | Precious metal and gem dealer violations                                                                                                       | 2               |
| 445.490       | Pub ord         | H            | Precious metal and gem dealer failure to obtain a certificate of registration                                                                  | 2               |
| 445.779       | Pub ord         | H            | Antitrust violation                                                                                                                            | 2               |
| 445.1505      | Pub trst        | G            | Franchise investment law — fraudulent filing/offers                                                                                            | 7               |
| 445.1508      | Pub trst        | G            | Franchise investment law — sale without proper disclosure                                                                                      | 7               |
| 445.1513      | Pub trst        | G            | Franchise investment law — illegal offers/sales                                                                                                | 7               |
| 445.1520      | Pub trst        | G            | Franchise investment law — keeping records                                                                                                     | 7               |
| 445.1521      | Pub trst        | G            | Franchise investment law — false representation                                                                                                | 7               |

|             |          |   |                                                                                   |    |
|-------------|----------|---|-----------------------------------------------------------------------------------|----|
| 445.1523    | Pub trst | G | Franchise investment law — false statements of material fact                      | 7  |
| 445.1525    | Pub trst | G | Franchise investment law — false advertising                                      | 7  |
| 445.1528    | Pub trst | D | Pyramid/chain promotions — offer or sell                                          | 7  |
| 445.1671    | Pub trst | E | Mortgage brokers, lenders — knowingly giving a false statement                    | 15 |
| 445.1679    | Pub trst | H | Mortgage brokers act — general violations                                         | 3  |
| 445.2507(2) | Pub ord  | F | Violation of unsolicited commercial e-mail protection act in furtherance of crime | 4  |

**777.16o MCL 750.271 to 750.313; felonies to which chapter applicable.**

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

| <b>M.C.L.</b>  | <b>Category</b> | <b>Class</b> | <b>Description</b>                                                           | <b>Stat Max</b> |
|----------------|-----------------|--------------|------------------------------------------------------------------------------|-----------------|
| 750.271        | Property        | E            | Fraudulently issuing or selling domestic securities                          | 10              |
| 750.272        | Property        | G            | Sale of fraudulent stock of foreign corporations                             | 10              |
| 750.273        | Property        | E            | Obtaining signature to financial document with intent to defraud             | 10              |
| 750.274        | Property        | E            | Fraud — purchasing/collecting on fraudulent financial document               | 10              |
| 750.276        | Property        | G            | Fraud — promise to vendee of grain at fictitious price                       | 4               |
| 750.277        | Pub trst        | G            | Promise to vendee of grain to sell at a fictitious price — sale and transfer | 4               |
| 750.278        | Property        | G            | Fraud — warehouse receipts                                                   | 5               |
| 750.279        | Property        | G            | Fraud — disposition of exhausted property                                    | 4               |
| 750.280        | Property        | E            | Gross frauds/cheats at common law                                            | 10              |
| 750.282        | Pub ord         | G            | Public utility — fraudulent use over \$500                                   | 4               |
| 750.300        | Pub ord         | G            | Animals — killing/injuring to defraud insurance company                      | 2               |
| 750.300a(1)(a) | Property        | G            | Food stamp fraud — \$250 or less — second offense                            | 5               |
|                | Property        | G            | Food stamp fraud — \$250 or less — third or subsequent offense               | 10              |
| 750.300a(1)(b) | Property        | E            | Food stamp fraud — more than \$250 to \$1,000                                | 5               |
|                | Property        | E            | Food stamp fraud — more than \$250 to \$1,000 — subsequent offense           | 10              |

|                |          |   |                                         |    |
|----------------|----------|---|-----------------------------------------|----|
| 750.300a(1)(c) | Property | E | Food stamp fraud — over \$1,000         | 10 |
| 750.303        | Pub ord  | H | Gaming                                  | 2  |
| 750.313        | Pub ord  | H | Gambling — stocks/bonds/<br>commodities | 2  |

**Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 458]****(HB 6172)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 24 of chapter VII (MCL 767.24), as amended by 2002 PA 119.

*The People of the State of Michigan enact:*

## CHAPTER VII

**767.24 Indictments; finding and filing; limitations.**

Sec. 24. (1) An indictment for murder, or criminal sexual conduct in the first degree, or a violation of chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, or a violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, that is punishable by life imprisonment may be found and filed at any time.

(2) An indictment for a violation or attempted violation of section 145c, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c, 750.520d, 750.520e, and 750.520g, may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 10 years after the offense is committed or by the alleged victim's twenty-first birthday, whichever is later.

(b) If evidence of the violation is obtained and that evidence contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the violation may be found and filed at any time after the offense is committed. However, after the individual is identified, the indictment may be found and filed within 10 years after the individual is identified or by the alleged victim's twenty-first birthday, whichever is later.

(c) As used in this subsection:

(i) "DNA" means human deoxyribonucleic acid.

(ii) "Identified" means the individual's legal name is known and he or she has been determined to be the source of the DNA.

(3) An indictment for kidnapping, extortion, assault with intent to commit murder, attempted murder, manslaughter, conspiracy to commit murder, or first-degree home invasion may be found and filed within 10 years after the offense is committed.

(4) An indictment for identity theft or attempted identity theft may be found and filed as follows:

(a) Except as otherwise provided in subdivision (b), an indictment may be found and filed within 6 years after the offense is committed.

(b) If evidence of the violation is obtained and the individual who committed the offense has not been identified, an indictment may be found and filed at any time after the offense is committed, but not more than 6 years after the individual is identified.

(c) As used in this subsection:

(i) "Identified" means the individual's legal name is known.

(ii) "Identity theft" means 1 or more of the following:

(A) Conduct prohibited in section 5 or 7 of the identity theft protection act, MCL 445.65 and 445.67.

(B) Conduct prohibited under former section 285 of the Michigan penal code, 1931 PA 328.

(5) All other indictments may be found and filed within 6 years after the offense is committed.

(6) Any period during which the party charged did not usually and publicly reside within this state is not part of the time within which the respective indictments may be found and filed.

(7) The extension or tolling, as applicable, of the limitations period provided in this section applies to any of those violations for which the limitations period has not expired at the time the extension or tolling takes effect.

### **Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.



**[No. 459]****(HB 6174)**

AN ACT to amend 1976 PA 331, entitled “An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties,” by amending section 3 (MCL 445.903), as amended by 2002 PA 613.

*The People of the State of Michigan enact:*

**445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules.**

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(l) Misrepresenting that because of some defect in a consumer’s home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services “free” or “without charge”, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer’s inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer’s inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(i) Except as provided in subparagraph (ii), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(ii) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(i) Is written or printed in a bold type that is not smaller than 10-point.

(ii) Fully describes the prize, including its cash value, won by the consumer.

(iii) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(iv) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) Violating section 11 of the identity theft protection act.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

### **Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 460]****(HB 6177)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” (MCL 750.1 to 750.568) by adding section 539k.

*The People of the State of Michigan enact:*

**750.539k Personal identifying information; prohibited conduct; exception; violation as misdemeanor; penalty; definitions.**

Sec. 539k. (1) A person who is not a party to a transaction that involves the use of a financial transaction device shall not secretly or surreptitiously photograph, or otherwise capture or record, electronically or by any other means, or distribute, disseminate, or transmit, electronically or by any other means, personal identifying information from the transaction without the consent of the individual.

(2) This section does not prohibit the capture or transmission of personal identifying information in the ordinary and lawful course of business.

(3) This section does not apply to a peace officer of this state, or of the federal government, or the officer’s agent, while in the lawful performance of the officer’s duties.

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

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

(6) As used in this section:

(a) “Financial transaction device” means that term as defined in section 157m.

(b) “Personal identifying information” means that term as defined in section 3 of the identity theft protection act, MCL 445.63.

**Effective date.**

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

This act is ordered to take immediate effect.

Approved December 22, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 461]****(SB 220)**

AN ACT to amend 1976 PA 331, entitled “An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for

certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties,” by amending section 3 (MCL 445.903), as amended by 2002 PA 613.

*The People of the State of Michigan enact:*

**445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules.**

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(l) Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services “free” or “without charge”, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer’s inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer’s inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(i) Except as provided in subparagraph (ii), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(ii) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(i) Is written or printed in a bold type that is not smaller than 10-point.

(ii) Fully describes the prize, including its cash value, won by the consumer.

(iii) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(iv) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to any consumer transaction that occurs on or after March 1, 2005, except that if a credit or debit card receipt is printed in a consumer transaction by an electronic device, this subdivision applies to any consumer transaction that occurs using that device only after 1 of the following dates, as applicable:

(i) If the electronic device is placed in service after March 1, 2005, July 1, 2005 or the date the device is placed in service, whichever is later.

(ii) If the electronic device is in service on or before March 1, 2005, July 1, 2006.

(ii) Violating section 11 of the identity theft protection act.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

### **Effective date.**

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

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 462]****(SB 657)**

AN ACT to amend 1976 PA 331, entitled “An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties,” by amending section 3 (MCL 445.903), as amended by 2002 PA 613.

*The People of the State of Michigan enact:*

**445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules; applicability of subsection (1)(hh).**

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(l) Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.



(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services “free” or “without charge”, or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer’s inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer’s inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(i) Except as provided in subparagraph (ii), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(ii) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(i) Is written or printed in a bold type that is not smaller than 10-point.

(ii) Fully describes the prize, including its cash value, won by the consumer.

(iii) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(iv) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) Except as provided in subsection (3), requiring a consumer to disclose his or her social security number as a condition to selling or leasing goods or providing a service to the consumer, unless any of the following apply:

(i) The selling, leasing, providing, terms of payment, or transaction includes an application for or an extension of credit to the consumer.

(ii) The disclosure is required or authorized by applicable state or federal statute, rule, or regulation.

(iii) The disclosure is requested by a person to obtain a consumer report for a permissible purpose described in section 604 of the fair credit reporting act, 15 USC 1681b.

(iv) The disclosure is requested by a landlord, lessor, or property manager to obtain a background check of the individual in conjunction with the rent or leasing of real property.

(v) The disclosure is requested from an individual to effect, administer or enforce a specific telephonic or other electronic consumer transaction that is not made in person but is requested or authorized by the individual if it is to be used solely to confirm the identity of the individual through a fraud prevention service database. The consumer good or service shall still be provided to the consumer upon verification of his or her identity if he or she refuses to provide his or her social security number but provides other information or documentation that can be used by the person to verify his or her identity. The person

may inform the consumer that verification through other means than use of the social security number may cause a delay in providing the service or good to the consumer.

(ii) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to any consumer transaction that occurs on or after March 1, 2005, except that if a credit or debit card receipt is printed in a consumer transaction by an electronic device, this subdivision applies to any consumer transaction that occurs using that device only after 1 of the following dates, as applicable:

(i) If the electronic device is placed in service after March 1, 2005, July 1, 2005 or the date the device is placed in service, whichever is later.

(ii) If the electronic device is in service on or before March 1, 2005, July 1, 2006.

(jj) Violating section 11 of the identity theft protection act.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

(3) Subsection (1)(hh) does not apply to either of the following:

(a) Providing a service related to the administration of health-related or dental-related benefits or services to patients, including provider contracting or credentialing. This subdivision is intended to limit the application of subsection (1)(hh) and is not intended to imply that this act would otherwise apply to health-related or dental-related benefits.

(b) An employer providing benefits or services to an employee.

### **Effective date.**

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

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 463]**

**(SB 1485)**

AN ACT to amend 1951 PA 33, entitled "An act to provide police and fire protection for townships and for certain areas in townships, certain incorporated villages, and cities under 15,000 population; to authorize contracting for fire and police protection; to authorize the purchase of fire and police equipment, and the maintenance and operation of the equipment; to provide for defraying the cost of the equipment; to authorize the creation of special assessment districts and the levying and collecting of special assessments; to authorize the issuance of special assessment bonds in anticipation of the collection of special assessments and the advancement of the amount necessary to pay such bonds, and to provide for reimbursement for such advances by reassessment if necessary; to authorize the collection of fees for certain emergency services in townships and other

municipalities; to authorize the creation of administrative boards and to prescribe their powers and duties; to provide for the appointment of traffic officers and to prescribe their powers and duties; and to repeal certain acts and parts of acts,” by amending the title and section 10 (MCL 41.810), the title as amended by 1990 PA 102.

*The People of the State of Michigan enact:*

#### TITLE

An act to provide police and fire protection for townships and for certain areas in townships, certain incorporated villages, and certain cities; to authorize contracting for fire and police protection; to authorize the purchase of fire and police equipment, and the maintenance and operation of the equipment; to provide for defraying the cost of the equipment; to authorize the creation of special assessment districts and the levying and collecting of special assessments; to authorize the issuance of special assessment bonds in anticipation of the collection of special assessments and the advancement of the amount necessary to pay such bonds, and to provide for reimbursement for such advances by reassessment if necessary; to authorize the collection of fees for certain emergency services in townships and other municipalities; to authorize the creation of administrative boards and to prescribe their powers and duties; to provide for the appointment of traffic officers and to prescribe their powers and duties; and to repeal acts and parts of acts.

### **41.810 Fire protection for townships, villages, and qualified cities; “qualified city” defined.**

Sec. 10. (1) This act applies to townships and adjoining townships and incorporated villages and qualified cities. If reference is made in this act to townships, that reference shall apply to townships and incorporated villages and qualified cities. If reference is made in this act to township boards, that reference shall apply to township boards and the legislative bodies of incorporated villages and qualified cities. A township, incorporated village, or qualified city shall not use this act to lessen the number of paid full-time firefighters in that township, incorporated village, or qualified city.

(2) As used in this act, “qualified city” means either of the following:

(a) A city with a population of less than 15,000.

(b) A city with a population of 15,000 or more and less than 70,000 located in a county with a population of more than 200,000 and less than 235,000, if the question of raising money by special assessment and the amount of the special assessment to be levied annually under this act is approved by a majority of the electors in the special assessment district. The amount of the special assessment to be levied annually under this act that was approved under this subdivision shall not be increased unless that increase is first approved by a majority of the electors in the special assessment district.

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

Enacting section 1. This amendatory act does not take effect unless House Bill No. 6338 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

**[No. 464]****(HB 6338)**

AN ACT to amend 1951 PA 33, entitled “An act to provide police and fire protection for townships and for certain areas in townships, certain incorporated villages, and cities under 15,000 population; to authorize contracting for fire and police protection; to authorize the purchase of fire and police equipment, and the maintenance and operation of the equipment; to provide for defraying the cost of the equipment; to authorize the creation of special assessment districts and the levying and collecting of special assessments; to authorize the issuance of special assessment bonds in anticipation of the collection of special assessments and the advancement of the amount necessary to pay such bonds, and to provide for reimbursement for such advances by reassessment if necessary; to authorize the collection of fees for certain emergency services in townships and other municipalities; to authorize the creation of administrative boards and to prescribe their powers and duties; to provide for the appointment of traffic officers and to prescribe their powers and duties; and to repeal certain acts and parts of acts,” by amending section 11 (MCL 41.811), as amended by 1989 PA 81.

*The People of the State of Michigan enact:*

**41.811 Joint administrative board; creation; appointment, qualifications, and terms of members; compensation and expenses; vacancy; additional member; election of chairperson and vice-chairperson; meetings; rules of procedure; record of proceedings; quorum; removal of members; annual budget; powers and duties; board not new employer; conducting business at public meeting; availability of writings to public; “governing body” defined.**

Sec. 11. (1) The governing bodies of 2 or more contiguous townships, villages, or qualified cities may, acting jointly, create a joint police administrative board, fire administrative board, or police and fire administrative board. A joint administrative board shall consist of 2 members from each participating township, village, or qualified city. The members of a joint administrative board shall be appointed by their respective governing bodies for terms of 6 years. However, of the first members appointed, 1 member from each participating township, village, or qualified city shall be appointed for a term of 4 years. A member of a joint administrative board shall not be an employee of a police or fire department of a participating township, village, or qualified city. A member of a joint administrative board may be compensated for each meeting, not to exceed 52 per year, at a rate not to exceed \$30.00 by the joint administrative board for each meeting the member attends and shall be reimbursed for actual and necessary expenses incurred in the performance of board duties. A vacancy on a joint administrative board shall be filled by the original appointing governing body for the remainder of the unexpired term.

(2) At its first meeting, a joint administrative board shall, by resolution approved by a majority of its members, select an additional member who shall be a resident of a participating township, village, or qualified city. The members shall annually elect a chairperson and a vice-chairperson from the board membership. A joint administrative board shall hold 4 regular quarterly meetings a year and special meetings as necessary at times as it determines. A joint administrative board shall adopt its own rules of procedure and shall keep a record of its proceedings. A majority of the members constitute a quorum for the transaction of business and the affirmative vote of a majority of all the members is necessary for the adoption of a motion or resolution. The members of a joint administrative

board shall be residents of the townships, villages, or qualified cities from which they were appointed. The members of a joint administrative board may be removed by the appointing governing body.

(3) A joint administrative board created pursuant to this section shall prepare an annual police department budget or fire department budget, or both, for the police department, fire department, or police and fire departments of each participating township, village, or qualified city. The proposed budgets shall be submitted to and reviewed by the respective governing bodies and may be amended, adopted, or rejected by them. A joint administrative board shall have other powers and duties as considered necessary by the participating governing bodies. A joint administrative board, if authorized to employ and appoint a police chief, fire chief, or other police or fire officers, including detectives, shall only employ and appoint such officers on behalf of an individual township, qualified city, or village and does not constitute a new employer.

(4) The business that a joint administrative board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) As used in this section, “governing body” means the body in which the legislative powers of a township, village, or qualified city are vested.

### **Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1485 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**Compiler's note:** Senate Bill No. 1485, referred to in enacting section 1, was filed with the Secretary of State December 28, 2004, and became P.A. 2004, No. 463, Imd. Eff. Dec. 28, 2004.

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**[No. 465]**

**(SB 1369)**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 151d and 151e (MCL 600.151d and 600.151e), section 151d as added by 2002 PA 740 and section 151e as added by 2002 PA 742.

*The People of the State of Michigan enact:*

**600.151d Juror compensation reimbursement fund; creation; use; deposits; investments; disposition of unencumbered balance.**

Sec. 151d. (1) The juror compensation reimbursement fund is created in the state treasury. The money in the fund shall be used as provided in section 151e.

(2) The state treasurer shall credit to the juror compensation reimbursement fund deposits of proceeds from the collection of driver license clearance fees as provided in section 321a(11) of the Michigan vehicle code, 1949 PA 300, MCL 257.321a, and deposits of proceeds from the collection of jury demand fees as provided in sections 2529(1)(c) and 8371(9), and shall credit all income from investment credited to the fund by the state treasurer. The state treasurer may invest money in the fund in any manner authorized by law for the investment of state money. However, an investment shall not interfere with any apportionment, allocation, or payment of money as required by section 151e. The state treasurer shall credit to the fund all income earned as a result of an investment of money in the fund. Except as provided in subsection (3), the unencumbered balance remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(3) For the state fiscal year ending September 30, 2005 only, \$4,000,000.00 of the unencumbered balance remaining in the fund at the end of that fiscal year shall be transferred by the state treasurer to the general fund.

**600.151e Juror compensation reimbursement fund; distribution; report; conditions for reimbursement; payments; "court funding unit" defined.**

Sec. 151e. (1) The money in the juror compensation reimbursement fund shall be distributed each year as provided in this section.

(2) Each court funding unit shall submit a report semiannually to the state court administrator, for each court for which it is a funding unit, giving the total amount of the expense incurred during the fiscal year by that funding unit due to the increase in the statutory minimum compensation rate for jurors that took effect October 1, 2003, pursuant to section 1344. If any of the juror compensation payments made by that court funding unit were in excess of the statutory minimum amount prescribed in section 1344, the report also shall include the total amount paid to jurors in excess of that statutory minimum.

(3) Each year, the state court administrator, at the direction of the supreme court and upon confirmation by the state treasurer of the total amount available in the fund, shall distribute from the fund the amount prescribed in subsection (4). However, reimbursements under this subsection are subject to both of the following:

(a) For fiscal years beginning after September 30, 2004, the state court administrator shall be reimbursed semiannually from the fund for reasonable costs associated with the administration of this section, not to exceed an annual total of \$40,000.00.

(b) If the amount available in the fund in any fiscal year is more than the amount needed to pay the entire reimbursement required for all court funding units under subsection (4), subject to section 151d(3) for the fiscal year ending September 30, 2005, the unencumbered balance shall be carried forward to the next fiscal year and shall not revert to the general fund.

(4) Each court funding unit is entitled to receive reimbursement from the fund for the expense amount reported under subsection (2) for the preceding 6 months, excluding any juror compensation in excess of the statutory minimum.

(5) Payments from the fund shall be made every 6 months. Reimbursement for each 6-month period beginning with the quarter that ends March 31, 2004 shall be made from the fund not later than 2 months after the end of the 6-month period.

(6) In addition to the amounts to be paid out under subsection (5) for the 6-month period ending March 31, 2004 and for the 6-month period ending September 30, 2004, the state court administrator shall pay an additional sum equal to 14% of the payment due under subsection (5) to each court funding unit. These 2 extra payments are intended to offset expenses incurred by court funding units for costs in adapting to the changes in the statutory minimum rate for juror compensation as implemented by 2002 PA 739.

(7) As used in this section, “court funding unit” means 1 of the following, as applicable:

- (a) For circuit or probate court, the county.
- (b) For district court, the district funding unit as that term is defined in section 8104.
- (c) For a municipal court, the city in which the municipal court is located.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 466]**

**(SB 1368)**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending section 175 (MCL 600.175), as added by 2003 PA 78.

*The People of the State of Michigan enact:*

**600.175 Judicial technology improvement fund; creation; use; disposition; investment; transfer of balance to general fund; administration; expenditure; reimbursement to state court administrative office.**

Sec. 175. (1) The judicial technology improvement fund is created in the state treasury. The money in the fund shall be used as provided in this section.

(2) The state treasurer shall credit to the judicial technology improvement fund deposits of proceeds from the collection of revenue from court fees as provided in this act and shall credit all income from investment credited to the fund by the state treasurer. The state treasurer may invest money in the fund in any manner authorized by law for the investment of state money. However, an investment shall not interfere with any apportionment, allocation, or payment of money as required by this section. The state treasurer shall credit to the fund all income earned as a result of an investment of money in the fund. Except as provided in subsection (3), the unencumbered balance remaining in



the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund.

(3) For the state fiscal year ending September 30, 2005 only, \$1,500,000.00 of the unencumbered balance remaining in the fund at the end of that fiscal year shall be transferred by the state treasurer to the general fund.

(4) The state court administrative office shall administer the judicial technology improvement fund. Money from the fund shall be expended for the development and ongoing support of a statewide judicial information system. The supreme court and the state court administrative office, working with the departments of state police, corrections, information technology, and secretary of state and with the prosecuting attorneys association of Michigan, will develop a statewide telecommunications infrastructure to integrate criminal justice information systems. The judicial technology improvement fund shall also be used to pursue technology innovations that will result in enhanced public service and access to local trial courts. These innovations will include, but not be limited to, electronic filing, on-line payments of fines and fees, data warehousing, and web-based instructions for completion of court documents.

(5) The state court administrative office shall be reimbursed annually from the judicial technology improvement fund for all reasonable costs associated with the administration of this section, including judicial and staff training, on-site management assistance, and software development and conversion.

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 467]**

**(SB 1143)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending section 2891 (MCL 333.2891), as amended by 2001 PA 31.

*The People of the State of Michigan enact:*

**333.2891 Search for vital record; request; fee; official statement if record not located; verification of identity; fees for search, establishment, and registration; furnishing copies without charge; fees for creation of new vital records and corrections of vital records; additional fees; disposition of fees; system of fees for local registrars.**

Sec. 2891. (1) The state registrar or a local registrar shall, upon receipt of a written request and payment of the prescribed fee, conduct a search for a vital record for an individual who purports to be eligible under section 2882 or for an agency under section 2883(2) to receive a certified copy, administrative use copy, or a statistical use copy of the requested vital record.

(2) If a search for a vital record is conducted by the state registrar and the vital record cannot be located, the state registrar shall issue an official statement to the effect that the vital record could not be located in place of a certified copy or an administrative use copy of a vital record. If a search for a vital record is conducted by a local registrar and the vital record cannot be located, the local registrar is not required to issue an official statement as described in this subsection, and the local registrar may waive the prescribed fee.

(3) The state registrar or a local registrar may require an applicant who requests a certified copy, an administrative use copy, or a statistical use copy of a vital record to provide verification of his or her identity before releasing the vital record if eligibility for the vital record is restricted pursuant to section 2882.

(4) Subject to subsection (8), the fees for a search are as follows:

- (a) A search including 1 certified copy, 1 administrative use copy, or 1 statistical use copy of a vital record or an official statement issued by the state registrar that a vital record could not be located ..... \$26.00
- (b) Additional identical copies ordered at the same time ..... \$12.00 per copy
- (c) Additional years searched ..... \$12.00 per year
- (d) An authenticated copy ..... \$29.00
- (e) Additional authenticated copies ordered at the same time ..... \$15.00 per copy
- (f) Verification of facts delineated in section 2881(2) ..... \$10.00
- (g) A request for an expedited search for a vital record ..... \$10.00

(5) The fees for establishment and registration are as follows:

- (a) Application for establishment of a delayed certificate of birth or death that includes 1 certified copy or an official denial of the application .. \$40.00
- (b) Registration of a delayed certificate of birth for a foreign born adopted child that includes 1 certified copy ..... \$40.00

(6) Upon formal application of a soldier; sailor; marine; member of the coast guard; nurse; member of a women’s auxiliary; or a person who is entitled to a bonus or a pension or other compensation under a law of this state, the United States, or other state or territory of the United States or a service auxiliary, 1 certified copy of a vital record requested from the state registrar shall be furnished without charge for the purpose of securing the bonus, pension, or compensation. If the person entitled to the vital record is deceased or mentally incompetent, the copy may be furnished to an heir, guardian, or legal representative of the person. The state registrar shall label a certified copy furnished under this subsection with the following statement: “for veteran’s benefits only, not for personal use”.

(7) Upon formal application, a certified copy of a vital record shall be furnished by the state registrar or a local registrar without charge to a licensed child placing agency

representing a child for adoption purposes. The state registrar shall label a certified copy provided under this subsection with the following statement: “for adoption purposes only, not for personal use”.

(8) Upon formal application, a person 65 years of age or older shall be charged a fee of \$7.00 for a search and 1 certified copy of his or her birth record.

(9) The following fees shall be charged for the creation of new vital records and corrections of vital records:

(a) Application to create a new certificate of birth following an adoption; legal change of name for minors; acknowledgment of paternity; sex change; legitimation; order of filiation; or a request to replace a court filed certificate of adoption ..... \$40.00

(b) Application received within 1 year of the date of the event to create a new certificate of birth or death to correct obvious minor errors and omissions ..... \$40.00

The errors and omissions that may be corrected under this subdivision are limited to the following:

(i) The addition of a given first or middle name if a name was not recorded at the time of filing.

(ii) A change to a social security number.

(iii) The addition of information originally specified as unknown or that was omitted by error.

(iv) A minor spelling change.

(10) A fee of \$40.00 shall be charged for an application to amend birth and death records more than 1 year after the date of the event for the purpose of adding information or correcting an error in information recorded on the document.

(11) A fee shall not be assessed for 1 or more of the following:

(a) Changing a vital record to correct an error made within the office of a local registrar or the state registrar.

(b) Correcting an error if the correction is initiated by the state registrar.

(c) Correcting a vital record if the correction is requested by a county medical examiner for a case within his or her jurisdiction.

(d) Correcting a record if the correction is ordered by a court of competent jurisdiction following denial by the department of an application to make the correction.

(e) Correcting a vital record if the correction is requested by a public agency that is the guardian of the individual to whom the vital record pertains.

(12) A fee of \$40.00 shall be charged for an application to amend a birth record regarding a documented legal change of name for an adult.

(13) The state registrar or a local registrar with approval of the state registrar may charge a reasonable fee to cover the costs of special services performed pursuant to section 2883, 2884, or 2888.

(14) Fees collected under this section by a local registrar shall be deposited as the governing body of the city or county directs. Fees collected under this section by the state registrar shall be deposited in the state treasury and credited to the general fund of this state.

(15) The state registrar or a local registrar shall not charge a fee other than a fee prescribed in this section. However, a local governmental unit may adopt a system of fees for local registrars under the jurisdiction of the local governmental unit for a search that

provides for fees less than those set forth in this section, and a charter county with a population of more than 2,000,000 may adopt a system of fees for a local registrar under the jurisdiction of that charter county that provides for fees more than those set forth in this section. However, a charter county shall not impose a fee that is greater than the cost of the service for which the fee is charged.

(16) For searches under subsection (4) a local registrar shall charge fees according to the following:

(a) The governing body of a local governmental unit that has jurisdiction over a local registrar may adopt a system of fees for the local registrar that provides for fees less than or equal to the fees set forth in subsection (4). These fees shall be used for the maintenance and sustenance of the vital records fees program only. The fees shall alleviate any burden to the taxpayers to provide this worthwhile program. A charter county with a population of more than 2,000,000 may adopt a system of fees for a local registrar under the jurisdiction of that charter county that provides for fees that are more than the fees set forth in subsection (4). A charter county shall not impose a fee that is greater than the cost of the service for which the fee is charged. A system of fees adopted under this subdivision shall be used by all local registrars under the jurisdiction of the local governmental unit, and shall be reasonably related to the cost incurred by the local registrar in making the search.

(b) If a system of fees is not adopted by a local registrar's local governmental unit under subdivision (a), the local registrar shall not charge a fee other than a fee prescribed in subsection (4).

This act is ordered to take immediate effect.

Approved December 27, 2004.

Filed with Secretary of State December 28, 2004.

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**[No. 468]**

**(SB 1130)**

AN ACT to amend 1978 PA 361, entitled "An act to provide for the control and management of certain state exposition centers and fairgrounds; to create a state exposition center and fairgrounds council; to prescribe its powers and duties; to provide for the appointment of a state exposition center and fairgrounds manager and to prescribe the manager's powers and duties; to designate the method of financing state exposition centers and fairgrounds; and to repeal certain acts and parts of acts," by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14a, and 15a (MCL 285.161, 285.162, 285.163, 285.164, 285.165, 285.166, 285.167, 285.168, 285.169, 285.170, 285.171, 285.172, 285.173, 285.174a, and 285.175a), sections 2, 5, 6, 7, 8, 9, and 11 as amended and sections 14a and 15a as added by 2000 PA 39, and by adding sections 15 and 15b.

*The People of the State of Michigan enact:*

TITLE

An act to provide for the control and management of certain state exposition centers and fairgrounds; to create a state exposition center and fairgrounds authority and board within the department of management and budget; to prescribe the authority's and board's powers and duties; to provide for the appointment of a state exposition center and

fairgrounds manager and to prescribe the manager's powers and duties; to designate the method of financing state exposition centers and fairgrounds; to create certain funds; to provide for appropriations; and to repeal acts and parts of acts.

### **285.161 Short title.**

Sec. 1. This act shall be known and may be cited as the "Michigan exposition and fairgrounds authority act".

### **285.162 Definitions.**

Sec. 2. As used in this act:

(a) "Authority" means the state exposition and fairgrounds authority created in section 9.

(b) "Authority board" means the board for the authority appointed under section 9.

(c) "Department" means the department of management and budget.

(d) "Director" means the director of the department.

(e) "Fund" means the state exposition and fairgrounds fund created in section 14a.

(f) "Manager" means the manager of the authority appointed under section 4.

(g) "Type I transfer" means that term as defined in section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

### **285.163 Fairs and uses of fairgrounds to which act inapplicable.**

Sec. 3. (1) This act does not apply to the Upper Peninsula state fair conducted under 1927 PA 89, MCL 285.141 to 285.145.

(2) This act does not apply to a fair conducted by a county of this state, or to a fair conducted under the official authorization of the county board of commissioners or other duly constituted county regional authority.

(3) This act shall not apply to uses of fairgrounds permitted under 1941 PA 80, MCL 285.151.

### **285.164 Michigan exposition and fairgrounds authority; creation; administration; transfer of certain powers and duties to the authority by type I transfer.**

Sec. 4. (1) The Michigan exposition and fairgrounds authority is created as a public body corporate within the department. The authority shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department.

(2) The activities, powers, duties, functions, responsibilities, and rule-making authority of the department of agriculture related to the management of the state exposition and fairgrounds are transferred by type I transfer to the authority.

(3) All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the department of agriculture for the activities, powers, duties, functions, and responsibilities are transferred to the authority. The state budget director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year ending September 30, 2005.

(4) The governor shall appoint a manager of the authority subject to the advice and consent of the senate, who is exempt from the classified state civil service. The manager shall serve at the pleasure of the governor. The manager shall administer the business operations of the state fair and the authority as provided in this act. The manager shall receive compensation determined annually by the authority. The person serving as manager on February 28, 2005 shall continue to serve at the pleasure of the governor.

### **285.165 Control vested in authority.**

Sec. 5. The control of all land and other property held or acquired by this state or its people for the purpose of holding and conducting agricultural and industrial fairs and exhibitions is vested in the authority.

### **285.166 Powers and duties of authority.**

Sec. 6. (1) The authority shall do all of the following:

(a) Conduct an annual state fair and other exhibits or events for the purpose of promoting all phases of the economy of this state. This fair and the exhibits or events shall encourage and demonstrate agricultural, industrial, commercial, educational, entertainment, tourism, technological, cultural, and recreational pursuits.

(b) Lease the state exposition and fairgrounds, a portion of the state exposition and fairgrounds, or a building on the state exposition and fairgrounds for purposes considered by the authority to be consistent with the staging of the state fair and other exhibits or events. The authority may determine and impose rental charges and other fees for the use or lease of the buildings and grounds or a portion of the buildings and grounds. The authority may lease properties to private and public organizations for a period not to exceed 30 years for consideration established by the authority. The authority may grant leases for all or a portion of the state exposition and fairgrounds to private and public organizations, conditional upon construction and improvements according to plans approved by the authority to be financed by the lessees, for terms not to exceed 30 years. The authority may grant an extension of the lease term for not more than an additional 20 years. The use of the state exposition and fairgrounds, a portion of the state exposition and fairgrounds, or a building on the state exposition and fairgrounds shall not interfere with the preparation for or holding of the state fair and other exhibits or events. Land, a building, or other property that is leased under this subdivision to a for-profit business shall be leased at fair market value. All leases and contracts entered into under this act remain valid until the expiration of the term of the lease or contract.

(c) Enter into contracts, subject to the requirements of the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, to conduct the annual state fair, exhibits, or other events, at the state exposition and fairgrounds that enhance agricultural, industrial, commercial, recreational, educational, entertainment, tourism, technological, or cultural pursuits or government services to citizens.

(2) The authority may enter into cooperative agreements, contracts, or other agreements with 1 or more governmental entities to use the personnel, services, or facilities of the governmental entity to assist the authority with carrying out its duties under this act and as otherwise provided by law.

### **285.167 Annual report; annual audit; rules.**

Sec. 7. (1) The authority annually shall present a report to the governor, the legislature, and the department describing the receipts or expenditures through appropriation, gift, grant, or conveyance that have a material bearing on the operation of the state fair or the state exposition and fairgrounds.

(2) The authority shall be subject to annual post audits of its financial transactions and accounts and to performance post audits by the auditor general.

(3) The authority may promulgate rules governing the conduct of the annual state fair and state exposition and fairgrounds and the development and administration of the state exposition and fairgrounds as a commercial, agricultural, recreational, and multipurpose facility, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Any rules in effect on the effective date of the amendatory act that added this sentence shall remain in effect until rescinded by the authority.

### **285.168 Powers and duties of manager.**

Sec. 8. The manager shall do all of the following:

- (a) Be directly responsible to the authority.
- (b) Be the chief administrative officer for the management and operation of the state exposition and fairgrounds, and may enter into contracts and leases, subject to the requirements of the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594, as authorized by rule promulgated under this act.
- (c) Have as a primary work station the site of the state exposition and fairgrounds.
- (d) Serve as an appointing authority for any necessary personnel associated with the management and operation of the state exposition and fairgrounds.
- (e) Be responsible for the financial operation of the state exposition and fairgrounds.
- (f) Develop ideas and programs that enhance the operation and functioning of the state exposition and fairgrounds.
- (g) Be responsible for the preparation of the annual budget for the state exposition and fairgrounds for presentation to the department.
- (h) Develop and present to the authority board for its approval each of the following:
  - (i) A financial plan submitted annually.
  - (ii) A rolling 5-year operations plan submitted annually.
  - (iii) A facility and utility renovation plan, updated as determined by the manager or as requested by the authority board.
  - (iv) A long-range master plan for authority facilities and the state exposition and fairgrounds, updated as determined by the manager or as requested by the authority board.

### **285.169 State exposition and fairgrounds authority; board; membership; exercising duties of office; vacancy; discharge of duties; conduct of business; quorum; compensation and expenses; officers; meetings.**

Sec. 9. (1) A state exposition and fairgrounds authority shall be governed by the 11-member authority board appointed under this section. The authority board shall consist of the following members:

- (a) The director or a designated representative as an ex officio voting member.
- (b) The director of the department of agriculture or a designated representative as an ex officio voting member.
- (c) Nine members, not more than 5 of whom shall be members of the same political party, appointed by the governor by and with the consent of the senate. The term of office of each member in this subdivision shall be 3 years except that, of the members first

appointed, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years. The former state exposition and fairgrounds council existing before March 1, 2005 is abolished. The governor shall appoint the 9 appointed members to serve on the authority board, and the terms of those members shall begin on March 1, 2005. Members of the former council are eligible for appointment to the authority board if otherwise qualified. It is the intent of the legislature that the members of the authority board represent all geographic areas of the state. The 9 appointed members shall be chosen from the following categories:

- (i) Three members representing agricultural interests.
- (ii) One member representing the tourism industry in Michigan.
- (iii) Two members of the general public.
- (iv) One member representing organized labor.
- (v) One member representing the business community.
- (vi) One member representing county fairs.

(2) Upon appointment to the authority board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the authority board shall enter the office and exercise the duties of the office.

(3) Regardless of the cause of a vacancy on the authority board, the governor shall fill a vacancy in the office of a member of the authority board by appointment by and with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term. A member of the authority board shall hold office until a successor has been appointed and has qualified.

(4) Members of the authority board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the authority board or an officer, employee, or agent of the authority board shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the authority board or an officer, employee, or agent of the authority board, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the authority board, or upon financial statements of the authority represented to the member of the authority board, officer, employee, or agent to be correct by the officer of the authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the authority.

(5) The authority board may adopt bylaws and policies and procedures for conducting its business. Six members of the authority board constitute a quorum for the transaction of business. An action of the authority board requires a concurring vote by 6 members of the authority board.

(6) Authority board members shall serve without compensation and shall receive reimbursement for actual and necessary expenses.

(7) The governor shall designate a member of the authority board to serve as its chairperson, who shall serve as chairperson at the pleasure of the governor. The authority board shall annually select other officers from its membership.

(8) The director and the director of the department of agriculture shall not serve as officers of the authority board.

- (9) The authority board shall meet not less than 4 times per year.



(10) At least 1 meeting of the authority board shall be dedicated to soliciting input from the local neighborhood advisory council established under section 15b, the surrounding communities, and local units of government.

**285.170 Conducting business at public meeting; notice; availability of writings to public; employment of experts and officers; contracts with department.**

Sec. 10. (1) The business that the authority board may perform shall be conducted at a public meeting of the authority board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A writing prepared, owned, used, in the possession of, or retained by the authority board or department in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs consistent with requirements established by the civil service commission, but an employee shall not be paid a higher salary than the manager. The authority board may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(4) The authority may contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

**285.171 Powers and duties of authority board.**

Sec. 11. Except as otherwise provided in this act, the authority board shall do all things necessary or convenient to implement the purposes, objectives, and provisions of this act, and the purposes, objectives, and powers delegated to the authority by other laws or executive orders, including, but not limited to, all of the following:

(a) Review and approve policies, including dates for the fair and the budget.

(b) Develop and submit to the department, the legislature, and the governor on a yearly basis a rolling 5-year operational plan and construction plan, including a master plan for the use of buildings and the grounds.

(c) Report to the director, the legislature, and the governor on the operating budget, capital improvements, programs, exhibits, and other matters relevant to the state exposition and fairgrounds.

(d) Approve or authorize the manager to approve utilization of the state exposition and fairgrounds, including its use as the site for the annual state fair, and on any other matter which the authority may regard as appropriate.

(e) Promote, encourage, and assist the manager in conducting exhibits or other events at the state exposition and fairgrounds that enhance agricultural, industrial, commercial, recreational, educational, or cultural pursuits or government service to citizens.

**285.172 Annual state fair; licensing agreements with concessionaires permitting games of skill; criteria; rules; grounds for revocation of licensing agreement; hearing; rules and facilities for bingo or millionaire party.**

Sec. 12. (1) In staging the annual state fair, the authority may enter into licensing agreements with concessionaires permitting games of skill which shall be conducted in accordance with the following criteria:

(a) Winning the game of skill does not require great skill on the part of the participant.

(b) The game does not constitute a fraud upon the participants.

(c) The game is not similar to games of chance in which winning depends primarily upon fortuitous or accidental circumstances beyond the control of the participant including games such as roulette, beano, cards, dice, or wheels of fortune and the game does not include a mechanical or physical device that directly or indirectly impedes, impairs, or thwarts the skill of the player.

(d) If the game is a group or contest participation game, each participant shall be in attendance at the time the game is played and shall actively participate throughout the entire game by personally designating his or her target, goal, or desired objective. A winner shall be determined by the skill of 1 or more of the participants in the group or contest game, and each participant shall be randomly selected. The distribution of prizes shall be made in the presence of each participant at the time the game is played.

(e) The prize has nominal value and is not redeemable or convertible into cash, directly or indirectly.

(2) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, consistent with the criteria established in subsection (1) to regulate the conduct of games of skill during the annual state fair and to protect the public from unauthorized or dishonest practices in conducting those games.

(3) The department may, after an administrative hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, revoke the licensing agreement of a concessionaire if the department determines that the public is being defrauded, or that this act or a rule promulgated pursuant to this act is being violated.

(4) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to permit the operation of a bingo or a millionaire party permitted and licensed under the Traxler-McCauley-Law-Bowman bingo act, 1972 PA 382, MCL 432.101 to 432.120. The authority may lease facilities as a location within or at which an organization qualified and licensed under that act may conduct bingo or a millionaire party.

### **285.173 Inapplicability of MCL 750.301 to 750.315a; leasing facilities for bingo.**

Sec. 13. (1) Sections 301 to 315a of the Michigan penal code, 1931 PA 328, MCL 750.301 to 750.315a, do not apply to a person who conducts or participates in a game of skill pursuant to section 12 or the rules promulgated under that section.

(2) The department may lease its facilities as a location within or at which an organization qualified and licensed under the Traxler-McCauley-Law-Bowman bingo act, 1972 PA 382, MCL 432.101 to 432.120, may conduct bingo.

### **285.174a State exposition and fairgrounds fund; creation; disposition; annual report; expenditure.**

Sec. 14a. (1) The state exposition and fairgrounds fund is created within the state treasury. The fund shall be administered by the authority.

(2) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer may receive money or other assets from any source for deposit into the fund. Money generated from the operation of activities authorized by this act shall be deposited into the fund.

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