

(c) Examination fee; Michigan portion.....	100.00
(d) Examination review	25.00
(e) Registration fee, per year	50.00

338.2225 Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, instructor, operator of cosmetology establishment or school of cosmetology, person seeking student registration or transfer, or person conducting apprenticeship program; fees.

Sec. 25. Fees for a person licensed or seeking licensure as a cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor or a person licensed or seeking licensure to operate a cosmetology establishment or school of cosmetology, seeking a student registration or transfer, or seeking a permit to conduct an apprenticeship program under article 12 of the occupational code, MCL 339.1201 to 339.1218, are as follows:

(a) Application processing fees:

(i) Apprenticeship program	\$ 25.00
(ii) Cosmetologist, manicurist, natural hair culturist, esthetician,	

electrologist, or instructor as follows:

(A) If paid through September 30, 2003 or after September 30, 2007	10.00
(B) Beginning October 1, 2003 through September 30, 2007.....	15.00
(iii) Cosmetology establishment	25.00
(iv) School of cosmetology	100.00

(b) Examination fees:

(i) Complete examination for cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor	25.00
(ii) Written portion only.....	15.00
(iii) Practical portion only	15.00
(iv) Examination review.....	20.00

(c) License fees, per year:

(i) Cosmetologist, manicurist, natural hair culturist, esthetician, electrologist, or instructor as follows:	
(A) If paid through September 30, 2003 or after September 30, 2007	12.00
(B) Beginning October 1, 2003 through September 30, 2007.....	24.00
(ii) Cosmetology establishment.....	25.00
(iii) School of cosmetology	100.00
(d) Student registration or transfer fee as follows:	
(i) If paid through September 30, 2003 or after September 30, 2007	5.00
(ii) Beginning October 1, 2003 through September 30, 2007.....	15.00

338.2227 Employment or consulting agent or operator of personnel agency; fees.

Sec. 27. Fees for a person licensed or seeking licensure as an employment or consulting agent or for a person licensed or seeking licensure to operate a personnel agency under article 10 of the occupational code, MCL 339.1001 to 339.1022, are as follows:

(a) Application processing fees:

(i) Personnel agency	\$ 225.00
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(ii) Employment or consulting agent	30.00
(iii) Officer or stockholder change.....	25.00
(b) Examination fee.....	50.00
(c) Examination review	20.00
(d) License fee, per year:	
(i) Personnel agency.....	125.00
(ii) Employment or consulting agent as follows:	
(A) If paid through September 30, 2003 or after September 30, 2007	30.00
(B) Beginning October 1, 2003 through September 30, 2007.....	40.00

338.2229 Forester; fees.

Sec. 29. Fees for a person registered or seeking registration as a forester under article 21 of the occupational code, MCL 339.2101 to 339.2108, are as follows:

(a) Application processing fee	\$ 50.00
(b) Registration fee, per year as follows:	
(i) If paid through September 30, 2003 or after September 30, 2007	25.00
(ii) Beginning October 1, 2003 through September 30, 2007.....	40.00

338.2231 Hearing aid dealer, salesperson, or trainee; fees.

Sec. 31. Fees for a person licensed or seeking licensure as a hearing aid dealer, salesperson, or trainee under article 13 of the occupational code, MCL 339.1301 to 339.1309, are as follows:

(a) Application processing fees:	
(i) Dealer	\$ 20.00
(ii) Salesperson	20.00
(iii) Trainee.....	10.00
(b) Examination fees:	
(i) Complete dealer examination.....	100.00
(ii) Dealer examination, per part.....	35.00
(iii) Complete salesperson examination	100.00
(iv) Salesperson examination, per part.....	30.00
(c) Examination review	20.00
(d) License fees, per year:	
(i) Dealer	80.00
(ii) Salesperson	50.00
(iii) Trainee as follows:	
(A) If paid through September 30, 2003 or after September 30, 2007	20.00
(B) Beginning October 1, 2003 through September 30, 2007.....	40.00

338.2237 Real estate broker, associate broker, salesperson, or branch office; fees; registration of property approved under land sales act; real estate education fund; real estate enforcement fund; creation and use.

Sec. 37. (1) Fees for a person licensed or seeking licensure as a real estate broker, associate broker, salesperson, or branch office or seeking other licenses or approvals issued under article 25 of the occupational code, MCL 339.2501 to 339.2518, are as follows:

(a) Application processing fees:

(i) Brokers and associate brokers as follows:

(A) If paid through September 30, 2003 or after September 30, 2007	\$ 20.00
(B) Beginning October 1, 2003 through September 30, 2007.....	35.00

(ii) Salespersons.....	10.00
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(iii) Branch office.....	10.00
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(b) License fees, per year:

(i) Brokers and associate brokers.....	36.00
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(ii) Salespersons.....	26.00
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(c) Branch office fee, per year as follows:

(i) If paid through September 30, 2003 or after September 30, 2007	10.00
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(ii) Beginning October 1, 2003 through September 30, 2007.....	20.00
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(d) Sale of out of state property:

(i) Application to sell.....	20.00
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(ii) Property registration	500.00
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(iii) Renewal of approval to sell	20.00
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(2) A fee shall not be required for the registration of property approved under the land sales act, 1972 PA 286, MCL 565.801 to 565.835.

(3) The real estate education fund is established in the state treasury and shall be administered by the department. Fifteen dollars of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited with the state treasurer to the credit of the real estate education fund. The department shall utilize the real estate education fund only for the operation of departmental programs related to education required of all licensees or applicants for licensure under article 25 of the occupational code, MCL 339.2501 to 339.2518. Any unexpended balance in the real estate education fund at the end of a fiscal year shall carry forward to the next fiscal year.

(4) The real estate enforcement fund is created in the state treasury and shall be administered by the department. Beginning October 1, 2003, \$15.00 of each license fee received by the department under subsection (1)(b) during that 3-year license cycle shall be deposited into the real estate enforcement fund. The department shall utilize the real estate enforcement fund only for the enforcement of article 25 of the occupational code, MCL 339.2501 to 339.2518, regarding unlicensed activity as further described in section 601(1) and (2) and to reimburse the attorney general for expenses incurred in conducting prosecutions of such unlicensed practice. Any unexpended balance in the real estate enforcement fund at the end of a fiscal year shall carry forward to the next fiscal year.

338.2238 State licensed real estate appraiser, certified general real estate appraiser, certified residential real estate appraiser, or limited real estate appraiser; fees; inclusion of federal fee; establishment, administration, funding, and utilization of real estate appraiser education fund; unexpended balance to be carried forward.

Sec. 38. (1) Fees for an individual licensed or seeking licensure as a state licensed real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, or a limited real estate appraiser under article 26 of the occupational code, MCL 339.2601 to 339.2637, are as follows:

(a) Application processing fees:

(i) Certified general real estate appraiser as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 \$ 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... \$ 35.00

(ii) Certified residential real estate appraiser as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 \$ 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... \$ 35.00

(iii) State licensed real estate appraiser as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 \$ 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... \$ 35.00

(iv) Limited real estate appraiser as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 \$ 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... \$ 35.00

(b) Examination fees, if the department conducts its own examination:

- (i) Certified general real estate appraiser \$100.00
- (ii) Certified residential real estate appraiser \$100.00
- (iii) State licensed real estate appraiser \$100.00

(c) License fee, per year:

- (i) Certified general real estate appraiser \$175.00
- (ii) Certified residential real estate appraiser \$175.00
- (iii) State licensed real estate appraiser \$175.00
- (iv) Limited real estate appraiser..... \$125.00
- (d) Temporary permit fee \$125.00

(2) The license fee includes a fee imposed by the federal government under sections 1113 and 1114 of title XI of the financial institutions reform, recovery, and enforcement act of 1989, Public Law 101-73, 12 U.S.C. 3331 to 3351, for certified general real estate appraisers, certified residential real estate appraisers, and state licensed real estate appraisers, which shall not exceed \$50.00 per licensee and which the department shall collect and pay to the federal government pursuant to section 2637 of the occupational code, MCL 339.2637.

(3) The real estate appraiser education fund is established in the state treasury and shall be administered by the department. Ten dollars of each fee received under subsection (1)(c) shall be deposited with the state treasurer to the credit of the real estate appraiser education fund. The department shall utilize the real estate appraiser education fund only for the operation of departmental programs related to the education required of all

licensees or applicants for licensure under article 26 of the occupational code, MCL 339.2601 to 339.2637. Any unexpended balance in the real estate appraiser education fund at the end of a fiscal year shall carry forward to the next fiscal year.

338.2239 Residential builder, residential maintenance and alteration contractor, salesperson, or branch office; fees.

Sec. 39. Fees for a person licensed or seeking licensure as a residential builder or residential maintenance and alteration contractor, salesperson, or branch office under article 24 of the occupational code, MCL 339.2401 to 339.2412, are as follows:

(a) Application processing fee	\$ 15.00
(b) Examination fees:	
(i) Complete builder or maintenance and alteration contractor examination ..	50.00
(ii) Law and rules portion.....	30.00
(iii) Practice or trades portion	30.00
(iv) Salesperson examination.....	30.00
(c) Examination review	20.00
(d) License fee, per year as follows:	
(i) If paid through September 30, 2003 or after September 30, 2007	30.00
(ii) Beginning October 1, 2003 through September 30, 2007.....	40.00

338.2243 Practice of mortuary science, operator of funeral establishment, resident trainer, embalmer, or funeral director; fees.

Sec. 43. (1) Fees for a person licensed or seeking licensure to engage in the practice of mortuary science or to operate a funeral establishment or for a person licensed or seeking licensure as a resident trainee or licensed as an embalmer or funeral director under article 18 of the occupational code, MCL 339.1801 to 339.1812, are as follows:

(a) Application processing fees:	
(i) Mortuary science license	\$ 20.00
(ii) Funeral establishment license	115.00
(iii) Resident trainee.....	15.00
(b) Examination fees:	
(i) Complete examination	200.00
(ii) National examination only.....	150.00
(iii) State examination only	50.00
(c) Examination review	25.00
(d) License fees, per year:	
(i) Mortuary science as follows:	
(A) If paid through September 30, 2003 or after September 30, 2007	30.00
(B) Beginning October 1, 2003 through September 30, 2007.....	40.00
(ii) Funeral establishment	55.00
(iii) Embalmer.....	30.00
(iv) Funeral director as follows:	
(A) If paid through September 30, 2003 or after September 30, 2007	30.00
(B) Beginning October 1, 2003 through September 30, 2007.....	40.00

(v) Resident trainee as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 15.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 30.00

338.2249 Professional boxer, professional wrestler, judge, manager, referee, timekeeper, announcer, second, boxing club, promoter, matchmaker, physician for boxing or wrestling contest, or person conducting boxing or wrestling contest; fees.

Sec. 49. Fees for a person licensed or seeking licensure as a professional boxer, professional wrestler, judge, manager, referee, timekeeper, announcer, second, boxing club, promoter, matchmaker, or physician for a boxing or wrestling contest or for a person licensed or seeking licensure to conduct a boxing or wrestling contest under article 8 of the occupational code, MCL 339.801 to 339.814, are as follows:

(a) Application processing fees:

(i) Professional boxer license and passport as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 35.00

(ii) All other licenses as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 15.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 30.00

(b) License fee, per year:

(i) Professional boxer, professional wrestler, second as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 10.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 20.00

(ii) Judge, physician, announcer, timekeeper as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 15.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 30.00

(iii) Boxing club as follows:

- (A) If paid through September 30, 2003 or after September 30, 2007 25.00
- (B) Beginning October 1, 2003 through September 30, 2007..... 40.00

(iv) Manager or matchmaker..... 50.00

(v) Amateur referee 50.00

(vi) Professional referee 75.00

(vii) Professional promoter 250.00

(c) Professional boxing or wrestling permit fee, per show 50.00

(d) Duplicate boxer passport fee as follows:

(i) If paid through September 30, 2003 or after September 30, 2007 15.00

(ii) Beginning October 1, 2003 through September 30, 2007..... 30.00

338.2262 Ocularist or apprentice ocularist; fees.

Sec. 62. Fees for a person registered or seeking registration as an ocularist or an apprentice ocularist under article 27 of the occupational code, MCL 339.2701 to 339.2721, are as follows:

- (a) Application processing fee as follows:
 - (i) If paid through September 30, 2003 or after September 30, 2007 15.00
 - (ii) Beginning October 1, 2003 through September 30, 2007 35.00
- (b) Registration fee, per year:
 - (i) Ocularist as follows:
 - (A) If paid through September 30, 2003 or after September 30, 2007 20.00
 - (B) Beginning October 1, 2003 through September 30, 2007 40.00
 - (ii) Apprentice as follows:
 - (A) If paid through September 30, 2003 or after September 30, 2007 10.00
 - (B) Beginning October 1, 2003 through September 30, 2007 20.00

This act is ordered to take immediate effect.

Approved July 21, 2003.

Filed with Secretary of State July 23, 2003.

[No. 88]

(SB 460)

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

the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 3406q (MCL 500.3406q), as added by 2002 PA 538, and by adding chapter 37.

The People of the State of Michigan enact:

500.3406q Off-label use of approved drug; coverage; conditions; compliance; use of copayment, deductible, sanction, or utilization control; limitation; definitions.

Sec. 3406q. (1) An expense-incurred hospital, medical, or surgical policy or certificate delivered, issued for delivery, or renewed in this state that provides pharmaceutical coverage and a health maintenance organization contract that provides pharmaceutical coverage shall provide coverage for an off-label use of a federal food and drug administration approved drug and the reasonable cost of supplies medically necessary to administer the drug.

(2) Coverage for a drug under subsection (1) applies if all of the following conditions are met:

(a) The drug is approved by the federal food and drug administration.

(b) The drug is prescribed by an allopathic or osteopathic physician for the treatment of either of the following:

(i) A life-threatening condition so long as the drug is medically necessary to treat that condition and the drug is on the plan formulary or accessible through the health plan's formulary procedures.

(ii) A chronic and seriously debilitating condition so long as the drug is medically necessary to treat that condition and the drug is on the plan formulary or accessible through the health plan's formulary procedures.

(c) The drug has been recognized for treatment for the condition for which it is prescribed by 1 of the following:

(i) The American medical association drug evaluations.

(ii) The American hospital formulary service drug information.

(iii) The United States pharmacopoeia dispensing information, volume 1, "drug information for the health care professional".

(iv) Two articles from major peer-reviewed medical journals that present data supporting the proposed off-label use or uses as generally safe and effective unless there is clear and convincing contradictory evidence presented in a major peer-reviewed medical journal.

(3) Upon request, the prescribing allopathic or osteopathic physician shall supply to the insurer or health maintenance organization documentation supporting compliance with subsection (2).

(4) This section does not prohibit the use of a copayment, deductible, sanction, or a mechanism for appropriately controlling the utilization of a drug that is prescribed for a use different from the use for which the drug has been approved by the food and drug administration. This may include prior approval or a drug utilization review program. Any copayment, deductible, sanction, prior approval, drug utilization review program, or mechanism described in this subsection shall not be more restrictive than for prescription coverage generally.

(5) As used in this section:

(a) “Chronic and seriously debilitating” means a disease or condition that requires ongoing treatment to maintain remission or prevent deterioration and that causes significant long-term morbidity.

(b) “Life-threatening” means a disease or condition where the likelihood of death is high unless the course of the disease is interrupted or that has a potentially fatal outcome where the end point of clinical intervention is survival.

(c) “Off-label” means the use of a drug for clinical indications other than those stated in the labeling approved by the federal food and drug administration.

CHAPTER 37

SMALL EMPLOYER GROUP HEALTH COVERAGE

500.3701 Definitions.

Sec. 3701. As used in this chapter:

(a) “Actuarial certification” means a written statement by a member of the American academy of actuaries or another individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of section 3705, based upon the person’s examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premiums for applicable health benefit plans.

(b) “Affiliation period” means a period of time required by a small employer carrier that must expire before health coverage becomes effective.

(c) “Base premium” means the lowest premium charged for a rating period under a rating system by a small employer carrier to small employers for a health benefit plan in a geographic area.

(d) “Carrier” means a person that provides health benefits, coverage, or insurance in this state. For the purposes of this chapter, carrier includes a health insurance company authorized to do business in this state, a nonprofit health care corporation, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health benefits, coverage, or insurance subject to state insurance regulation.

(e) “COBRA” means the consolidated omnibus budget reconciliation act of 1985, Public Law 99-272, 100 Stat. 82.

(f) “Commercial carrier” means a small employer carrier other than a nonprofit health care corporation or health maintenance organization.

(g) “Creditable coverage” means, with respect to an individual, health benefits, coverage, or insurance provided under any of the following:

(i) A group health plan.

(ii) A health benefit plan.

(iii) Part A or part B of title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395c to 1395i and 1395i-2 to 1395i-5, and 42 U.S.C. 1395j to 1395t, 1395u to 1395w, and 1395w-2 to 1395w-4.

(iv) Title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v, other than coverage consisting solely of benefits under section 1929 of title XIX of the social security act, 42 U.S.C. 1396t.

(v) Chapter 55 of title 10 of the United States Code, 10 U.S.C. 1071 to 1110. For purposes of chapter 55 of title 10 of the United States Code, 10 U.S.C. 1071 to 1110, “uniformed services” means the armed forces and the commissioned corps of the national oceanic and atmospheric administration and of the public health service.

(vi) A medical care program of the Indian health service or of a tribal organization.

(vii) A state health benefits risk pool.

(viii) A health plan offered under the employees health benefits program, chapter 89 of title 5 of the United States Code, 5 U.S.C. 8901 to 8914.

(ix) A public health plan, which for purposes of this chapter means a plan established or maintained by a state, county, or other political subdivision of a state that provides health insurance coverage to individuals enrolled in the plan.

(x) A health benefit plan under section 5(e) of title I of the peace corps act, Public Law 87-293, 22 U.S.C. 2504.

(h) “Eligible employee” means an employee who works on a full-time basis with a normal workweek of 30 or more hours. Eligible employee includes an employee who works on a full-time basis with a normal workweek of 17.5 to 30 hours, if an employer so chooses and if this eligibility criterion is applied uniformly among all of the employer’s employees and without regard to health status-related factors.

(i) “Geographic area” means an area in this state that includes not less than 1 entire county, established by a carrier pursuant to section 3705 and used for adjusting premiums for a health benefit plan subject to this chapter. In addition, if the geographic area includes 1 entire county and additional counties or portions of counties, the counties or portions of counties must be contiguous with at least 1 other county or portion of another county in that geographic area.

(j) “Group health plan” means an employee welfare benefit plan as defined in section 3(1) of subtitle A of title I of the employee retirement income security act of 1974, Public Law 93-406, 29 U.S.C. 1002, to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise. As used in this chapter, all of the following apply to the term group health plan:

(i) Any plan, fund, or program that would not be, but for section 2721(e) of subpart 4 of part A of title XXVII of the public health service act, chapter 373, 110 Stat. 1967, 42 U.S.C. 300gg-21, an employee welfare benefit plan and that is established or maintained by a partnership, to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care, to present or former partners in the partnership, or to their dependents, as defined under the terms of the plan, fund, or program, directly or through insurance, reimbursement or otherwise, shall be treated, subject to subparagraph (ii), as an employee welfare benefit plan that is a group health plan.

(ii) The term “employer” also includes the partnership in relation to any partner.

(iii) The term “participant” also includes an individual who is, or may become, eligible to receive a benefit under the plan, or the individual’s beneficiary who is, or may become, eligible to receive a benefit under the plan. For a group health plan maintained by a partnership, the individual is a partner in relation to the partnership and for a group health plan maintained by a self-employed individual, under which 1 or more employees are participants, the individual is the self-employed individual.

(k) “Health benefit plan” or “plan” means an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation certificate, or health maintenance organization contract. Health benefit plan does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; worker’s compensation or similar insurance; or automobile medical-payment insurance.

(l) “Index rate” means the arithmetic average during a rating period of the base premium and the highest premium charged per employee for each health benefit plan offered by each small employer carrier to small employers and sole proprietors in a geographic area.

(m) “Nonprofit health care corporation” means a nonprofit health care corporation operating pursuant to the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

(n) “Premium” means all money paid by a small employer, a sole proprietor, eligible employees, or eligible persons as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(o) “Rating period” means the calendar period for which premiums established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

(p) “Small employer” means any person, firm, corporation, partnership, limited liability company, or association actively engaged in business who, on at least 50% of its working days during the preceding and current calendar years, employed at least 2 but not more than 50 eligible employees. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for state taxation purposes shall be considered 1 employer.

(q) “Small employer carrier” means either of the following:

(i) A carrier that offers health benefit plans covering the employees of a small employer.

(ii) A carrier under section 3703(3).

(r) “Sole proprietor” means an individual who is a sole proprietor or sole shareholder in a trade or business through which he or she earns at least 50% of his or her taxable income as defined in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30, excluding investment income, and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year; who is a resident of this state; and who is actively employed in the operation of the business, working at least 30 hours per week in at least 40 weeks out of the calendar year.

(s) “Waiting period” means, with respect to a health benefit plan and an individual who is a potential enrollee in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan. For purposes of calculating periods of creditable coverage under this chapter, a waiting period shall not be considered a gap in coverage.

500.3703 Scope of chapter.

Sec. 3703. (1) This chapter applies to any health benefit plan that provides coverage to 2 or more employees of a small employer.

(2) This chapter does not apply to individual health insurance policies that are subject to policy form and premium approval by the commissioner.

(3) A nonprofit health care corporation shall make available upon request a health benefit plan to a sole proprietor. This chapter does apply to a nonprofit health care corporation providing a health benefit plan to a sole proprietor and to any other small employer carrier that elects to provide a health benefit plan to a sole proprietor.

500.3705 Geographic areas; determination of premiums; conditions; small employer or sole proprietor; rating factors.

Sec. 3705. (1) For adjusting premiums for health benefit plans subject to this chapter, a carrier may establish up to 10 geographic areas in this state. A nonprofit health care corporation shall establish geographic areas that cover all counties in this state.

(2) Premiums for a health benefit plan under this chapter are subject to the following:

(a) For a nonprofit health care corporation, only industry and age may be used for determining the premiums within a geographic area for a small employer or sole proprietor located in that geographic area. For a health maintenance organization, only industry, age, and group size may be used for determining the premiums within a geographic area for a small employer or sole proprietor located in that geographic area. For a commercial carrier, only industry, age, group size, and health status may be used for determining the premiums within a geographic area for a small employer or sole proprietor located in that geographic area.

(b) The premiums charged during a rating period by a nonprofit health care corporation or a health maintenance organization for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 35% of the index rate. However, for a health benefit plan issued before the effective date of this chapter by a nonprofit health care corporation or health maintenance organization, the premiums for the plan are subject to the following:

(i) For a renewal occurring on or after the effective date of this chapter and through December 31, 2004, the premiums charged for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not be higher than 15% above the index rate or lower than 35% below the index rate.

(ii) For a renewal occurring on or after January 1, 2005, the premiums charged for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 35% of the index rate.

(c) The premiums charged during a rating period by a commercial carrier for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 45% of the index rate. However, for a health benefit plan issued before the effective date of this chapter by a commercial carrier, the premiums for the plan are subject to the following:

(i) For a renewal occurring on or after the effective date of this chapter and through December 31, 2004, the premiums charged for a health benefit plan in a geographic area

to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 70% of the index rate.

(ii) For a renewal occurring on or after January 1, 2005 and through December 31, 2005, the premiums charged for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 55% of the index rate.

(iii) For a renewal occurring on or after January 1, 2006, the premiums charged for a health benefit plan in a geographic area to small employers or sole proprietors located in that geographic area shall not vary from the index rate for that health benefit plan by more than 45% of the index rate.

(d) For a sole proprietor, a small employer carrier may charge an additional premium of up to 25% above the premiums in subdivision (b) or (c).

(e) Except as otherwise provided in this section, the percentage increase in the premiums charged to a small employer or sole proprietor in a geographic area for a new rating period shall not exceed the sum of the annual percentage adjustment in the geographic area's index rate for the health benefit plan and an adjustment pursuant to subdivision (a). The adjustment pursuant to subdivision (a) shall not exceed 15% annually and shall be adjusted pro rata for rating periods of less than 1 year. This subdivision does not prohibit an adjustment due to change in coverage.

(3) Beginning 1 year after the effective date of this chapter, if a small employer had been covered by a self-insured health benefit plan immediately preceding application for a health benefit plan subject to this chapter, a carrier may charge an additional premium of up to 33% above the premium in subsection (2)(b) or (c) for no more than 2 years.

(4) Health benefit plan options, number of family members covered, and medicare eligibility may be used in establishing a small employer's or sole proprietor's premium.

(5) A small employer carrier shall apply all rating factors consistently with respect to all small employers and sole proprietors in a geographic area. Except as provided in subsection (4), a small employer carrier shall bill a small employer group only with a composite rate and shall not bill so that 1 or more employees in a small employer group are charged a higher premium than another employee in that small employer group.

500.3706 Open enrollment period for sole proprietors; available health benefit plans; exclusion or limitation; preexisting condition.

Sec. 3706. (1) A small employer carrier may apply an open enrollment period for sole proprietors. If a small employer carrier applies an open enrollment period for sole proprietors, the open enrollment period shall be offered at least annually and shall be at least 1 month long.

(2) A small employer carrier is not required to offer or provide to a sole proprietor all health benefit plans available to small employers who are not sole proprietors. However, a small employer carrier is required to offer to all sole proprietors all health benefit plans in a geographic area that are available to any sole proprietor in that geographic area.

(3) A small employer carrier may exclude or limit coverage for a sole proprietor for a condition only if the exclusion or limitation relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within 6 months before enrollment and the exclusion or limitation does not extend for more than 6 months after the effective date of the health benefit plan.

(4) A small employer carrier shall not impose a preexisting condition exclusion for a sole proprietor that relates to pregnancy as a preexisting condition or with regard to a child who is covered under any creditable coverage within 30 days of birth, adoption, or

placement for adoption, provided that the child does not experience a significant break in coverage and provided that the child was adopted or placed for adoption before attaining 18 years of age. A period of creditable coverage under this subsection shall not be counted for enrollment of an individual under a health benefit plan if, after this period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

500.3707 Health benefit plan; marketing; affiliation period.

Sec. 3707. (1) As a condition of transacting business in this state with small employers, every small employer carrier shall make available to small employers all health benefit plans it markets to small employers in this state. A small employer carrier shall be considered to be marketing a health benefit plan if it offers that plan to a small employer not currently receiving a health benefit plan from that small employer carrier. A small employer carrier shall issue any health benefit plan to any small employer that applies for the plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this chapter.

(2) Except as otherwise provided in this subsection, a small employer carrier shall not offer or sell to small employers a health benefit plan that contains a waiting period applicable to new enrollees or late enrollees. However, a small employer carrier may offer or sell to small employers other than sole proprietors a health benefit plan that provides for an affiliation period of time that must expire before coverage becomes effective for a new enrollee or a late enrollee if all of the following are met:

(a) The affiliation period is applied uniformly to all new and late enrollees and dependents of the new and late enrollees of the small employer and without regard to any health status-related factor.

(b) The affiliation period does not exceed 60 days for new enrollees and does not exceed 90 days for late enrollees.

(c) The small employer carrier does not charge any premiums for the enrollee during the affiliation period.

(d) The coverage issued is not effective for the enrollee during the affiliation period.

500.3708 Special enrollment period.

Sec. 3708. (1) A health benefit plan offered to a small employer by a small employer carrier shall provide for the acceptance of late enrollees subject to this chapter.

(2) A small employer carrier shall permit an employee or a dependent of the employee, who is eligible, but not enrolled, to enroll for coverage under the terms of the small employer health benefit plan during a special enrollment period if all of the following apply:

(a) The employee or dependent was covered under a group health plan or had coverage under a health benefit plan at the time coverage was previously offered to the employee or dependent.

(b) The employee stated in writing at the time coverage was previously offered that coverage under a group health plan or other health benefit plan was the reason for declining enrollment, but only if the small employer or carrier, if applicable, required such a statement at the time coverage was previously offered and provided notice to the employee of the requirement and the consequences of the requirement at that time.

(c) The employee's or dependent's coverage described in subdivision (a) was either under a COBRA continuation provision and that coverage has been exhausted or was not under a COBRA continuation provision and that other coverage has been terminated as a result of loss of eligibility for coverage, including because of a legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment or

employer contributions toward that other coverage have been terminated. In either case, under the terms of the health benefit plan, the employee must request enrollment not later than 30 days after the date of exhaustion of coverage or termination of coverage or employer contribution. If an employee requests enrollment pursuant to this subdivision, the enrollment is effective not later than the first day of the first calendar month beginning after the date the completed request for enrollment is received.

(3) A small employer carrier that makes dependent coverage available under a health benefit plan shall provide for a dependent special enrollment period during which the person may be enrolled under the health benefit plan as a dependent of the individual or, if not otherwise enrolled, the individual may be enrolled under the health benefit plan. For a birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage. This subsection applies only if both of the following occur:

(a) The individual is a participant under the health benefit plan or has met any affiliation period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan, but for a failure to enroll during a previous enrollment period.

(b) The person becomes a dependent of the individual through marriage, birth, or adoption or placement for adoption.

(4) The dependent special enrollment period under subsection (3) for individuals shall be a period of not less than 30 days and begins on the later of the date dependent coverage is made available or the date of the marriage, birth, or adoption or placement for adoption. If an individual seeks to enroll a dependent during the first 30 days of the dependent special enrollment period under subsection (3), the coverage of the dependent shall be effective as follows:

(a) For marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received.

(b) For a dependent's birth, as of the date of birth.

(c) For a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

500.3709 Minimum participation rules.

Sec. 3709. (1) Except as provided in this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the small employer carrier. If a small employer carrier waives a minimum participation rule for a small employer, the carrier cannot later enforce that minimum participation rule for that small employer.

(2) A small employer carrier may deny coverage to a small employer if the small employer fails to enroll enough of its employees to meet the minimum participation rules established by the carrier pursuant to sound underwriting requirements. A minimum participation rule may require a small employer to enroll a certain number or percentage of employees with the small employer carrier as a condition of coverage. A minimum participation rule is subject to the following:

(a) For a small employer of 10 or fewer eligible employees, may require enrollment of up to 100% of the small employer's employees seeking health care coverage through the small employer.

(b) For a small employer of 11 to 25 eligible employees, may require enrollment of up to 75% of the small employer's employees seeking health care coverage through the small employer.

(c) For a small employer of 26 to 50 eligible employees, may require enrollment of up to 50% of the small employer's employees seeking health care coverage through the small employer.

500.3711 Guaranteed renewal; exceptions.

Sec. 3711. (1) Except as provided in this section, a small employer carrier that offers health coverage in the small employer group market in connection with a health benefit plan shall renew or continue in force that plan at the option of the small employer or sole proprietor.

(2) Guaranteed renewal under subsection (1) is not required in cases of: fraud or intentional misrepresentation of the small employer or, for coverage of an insured individual, fraud or misrepresentation by the insured individual or the individual's representative; lack of payment; noncompliance with minimum participation requirements; if the small employer carrier no longer offers that particular type of coverage in the market; or if the sole proprietor or small employer moves outside the geographic area.

500.3712 Decision to discontinue plan in geographic area.

Sec. 3712. (1) If a small employer carrier decides to discontinue offering all small employer health benefit plans in a geographic area, all of the following apply:

(a) The small employer carrier shall provide notice to the commissioner and to each small employer covered by the small employer carrier in the geographic area of the discontinuation at least 180 days prior to the date of the discontinuation of the coverage.

(b) All small employer health benefit plans issued or delivered for issuance in the geographic area are discontinued and all current health benefit plans in the geographic area are not renewed.

(c) The small employer carrier shall not issue or deliver for issuance any small employer health benefit plans in the geographic area for 5 years beginning on the date the last small employer health benefit plan in the geographic area is not renewed under subdivision (b).

(d) The small employer carrier shall not issue or deliver for issuance for 5 years any small employer health benefit plans in an area that was not a geographic area where the small employer carrier was issuing or delivering for issuance small employer health benefit plans on the date notice was given under subdivision (a). The 5-year period under this subdivision begins on the date notice was given under subdivision (a).

(2) A nonprofit health care corporation shall not cease to renew all health benefit plans in a geographic area.

500.3713 Information offered upon request.

Sec. 3713. Each small employer carrier shall provide all of the following to a small employer upon request and upon entering into a contract with the small employer:

(a) The extent to which premiums for a specific small employer are established or adjusted due to any permitted characteristic and rating factors of the small employer's employees and the employees' dependents.

(b) The provisions concerning the carrier's right to change premiums, permitted characteristics, and any rating factors under this chapter that affect changes in premiums.

(c) The provisions relating to renewability of coverage.

500.3715 Information and documentation; retention at principal place of business.

Sec. 3715. (1) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(2) Each small employer carrier shall file each March 1 with the commissioner an actuarial certification, that the carrier is in compliance with this section and that the rating methods of the carrier are actuarially sound. A copy of the actuarial certification shall be retained by the carrier at its principal place of business.

(3) A small employer carrier shall make the information and documentation described in subsection (1) available to the commissioner upon request.

(4) This section is in addition to, and not in substitution of, the applicable filing provisions in this act and in the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704.

500.3716 Archer medical savings account; exception.

Sec. 3716. This chapter does not apply to a health benefit plan sponsored by a small employer that is an Archer medical savings account that meets all requirements of section 220 of the internal revenue code of 1986.

500.3717 Suspension; exemption; conditions; exception.

Sec. 3717. (1) Upon a request for suspension by the small employer carrier and a finding by the commissioner after consulting with the attorney general that the suspension is reasonable in light of the financial condition of the carrier and that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance, the commissioner may suspend all or any part of section 3705 as to the premiums applicable to 1 or more small employers for 1 or more rating periods and may suspend section 3712(1)(c) or (d).

(2) A commercial carrier whose capital and surplus as concerns policyholders as of December 31, 2003 as shown on the annual financial statement filed with the commissioner is \$18,000,000.00 or less may be exempt from this chapter, if the commercial carrier had policyholders residing in Michigan before June 1, 2003, the commercial carrier files with the commissioner a written request for an exemption, and the commissioner, after reviewing the commercial carrier's request and annual financial statement, determines an exemption is warranted.

(3) An exemption granted under subsection (2) is effective for 3 years, so long as the commercial carrier experiences no disproportionate growth in premium volume in business written, or changes in the commercial carrier's pattern, location, or contours of that insurance business that indicate that the commercial carrier is utilizing its exemption to take unfair competitive advantage of competing small employer carriers who do not qualify for the exemption. A commercial carrier that meets the requirements of subsections (2) to (5) may reapply every 3 years to the commissioner for a subsection (2) exemption. The commissioner shall continue an exemption granted under subsection (2) if the commissioner finds the commercial carrier meets the criteria in subsections (2) to (5) for the exemption.

(4) The commissioner shall not grant an exemption under subsection (2) to any carrier that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or

is under common control with a carrier whose surplus as concerns policyholders is in excess of the amount stated in subsection (2).

(5) A carrier admitted to do business in this state after June 1, 2003 is not eligible for an exemption under subsection (2).

500.3718 Applicability of MCL 550.1619.

Sec. 3718. A nonprofit health care corporation is subject to section 619 of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1619.

500.3721 Competition; public hearing; report; supplemental report and certification.

Sec. 3721. (1) By May 15, 2007 and by each May 15 after 2007, the commissioner shall make a determination as to whether a reasonable degree of competition in the small employer carrier health market exists on a statewide basis. In making this determination, the commissioner shall hold a public hearing in 2007 and may hold a public hearing thereafter, shall seek advice and input from appropriate independent sources, and shall issue a report delineating specific classifications and kinds or types of insurance, if any, where competition does not exist and any suggested statutory or other changes necessary to increase or encourage competition. The report shall be based on relevant economic tests, including, but not limited to, those in subsection (3). Report findings shall not be based on any single measure of competition, but appropriate weight shall be given to all measures of competition.

(2) If the results of the report issued under subsection (1) are disputed or if the commissioner determines that circumstances that the report was based on have changed, the commissioner shall issue a supplemental report to the report under subsection (1) that includes a certification of whether or not a reasonable degree of competition exists in the small employer carrier health market. The supplemental report and certification shall be issued not later than December 15 immediately following the release of the report under subsection (1) that this report supplements and shall be supported by substantial evidence.

(3) All of the following shall be considered by the commissioner for purposes of subsections (1) and (2):

(a) The extent to which any carrier controls all or a portion of the small employer carrier health benefit plan market.

(b) Whether the total number of carriers writing small employer health benefit plan coverage in this state is sufficient to provide multiple options to small employers.

(c) The disparity among small employer health benefit plan rates and classifications to the extent that those classifications result in rate differentials.

(d) The availability of small employer health benefit plan coverage to small employers in all geographic areas and all types of business.

(e) The overall rate level that is not excessive, inadequate, or unfairly discriminatory.

(f) Any other factors the commissioner considers relevant.

(4) The reports and certifications required under subsections (1) and (2) shall be forwarded to the governor, the clerk of the house, the secretary of the senate, and all the members of the senate and house of representatives standing committees on insurance and health issues.

500.3723 Applicability of provisions; date of health benefit plan.

Sec. 3723. The provisions of this chapter apply to each health benefit plan for a small employer or sole proprietor that is delivered, issued for delivery, renewed, or continued in this state on or after the effective date of this chapter. For purposes of this section, the date a health benefit plan is continued is the first rating period that begins on or after the effective date of this chapter.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 234 of the 92nd Legislature is enacted into law.

Effective date.

Enacting section 2. This amendatory act takes effect 6 months after the date this amendatory act is enacted.

This act is ordered to take immediate effect.

Approved July 21, 2003.

Filed with Secretary of State July 23, 2003.

Compiler's note: Senate Bill No. 234, referred to in enacting section 1, was filed with the Secretary of State July 15, 2003, and became P.A. 2003, No. 59, Eff. July 23, 2003.

[No. 89]**(SB 37)**

AN ACT to amend 1968 PA 251, entitled "An act to regulate the creation and management of cemeteries; to regulate the sale of cemetery services and merchandise; to provide for a cemetery commissioner, and to prescribe the powers and duties of the commissioner; to require the registration and audit of cemeteries; to regulate persons selling burial, entombment, or columbarium rights, cemetery services, or cemetery merchandise; and to prescribe penalties," by amending section 16 (MCL 456.536), as amended by 1982 PA 132.

The People of the State of Michigan enact:

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

Sec. 16. (1) The commissioner shall require each cemetery to establish and maintain an irrevocable endowment care fund as required by section 35a of 1855 PA 87, MCL 456.35a, or section 7a of 1869 PA 12, MCL 456.107a, and to report annually before July 1 of each year, on forms approved and furnished by the commissioner, care fund information required to be reported to the commissioner by other statutes and information regarding the funds as the commissioner considers pertinent in the public interest. A cemetery

applying to the commissioner as authorized by other statutes for a care fund deposit modification or waiver shall be assessed the actual expenses for an examination or investigation by the commissioner. The commissioner shall require each person engaged as agent or seller, as a means of livelihood either part time or full time, in the selling of burial rights, entombment rights, or columbarium rights owned by a party other than a cemetery or corporation subject to the irrevocable endowment care fund requirements of other laws, to deposit 15% of all gross proceeds received from the sales of those rights into the irrevocable endowment care fund of the cemetery in which the rights are located if an irrevocable endowment care fund exists for that cemetery. Excess sums on deposit in the fund can be applied by a cemetery against future deposits. A deposit required to be made by those persons shall be modified or waived if the cemetery has received an irrevocable endowment care fund deposit modification or waiver approved by the commissioner. The total deposit for a single adult burial right sale or assignment shall not be less than \$20.00.

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

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

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

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

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

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

(8) As used in this section, “endowment care” means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to, the cutting of grass at reasonable intervals; raking, cleaning, filling, seeding, and sodding of graves; replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

Conditional effective date.

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

- (a) Senate Bill No. 38.
- (b) Senate Bill No. 39.

This act is ordered to take immediate effect.
Approved July 24, 2003.
Filed with Secretary of State July 24, 2003.

Compiler's note: Senate Bill No. 38, referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 90, Imd. Eff. July 24, 2003.

Senate Bill No. 39, also referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 91, Imd. Eff. July 24, 2003.

[No. 90]

(SB 38)

AN ACT to amend 1869 PA 12, entitled “An act to authorize and encourage the formation of corporations to establish rural cemeteries; to provide for the care and maintenance thereof; to provide for the revision and codification of the laws relating to cemeteries, mausoleums, crypts, vaults, crematoriums, and other means of disposing of the dead; to make an appropriation therefor; and to impose certain duties upon the department of commerce,” by amending section 7a (MCL 456.107a).

The People of the State of Michigan enact:

456.107a Endowment care funds; minimum requirements; administration; investment; legal remedies; “perpetual care” defined.

Sec. 7a. (1) The fund required to be set aside under section 7 for perpetual care regarding cemeteries established after March 10, 1967, or mausoleums which are not located in the confines of a dedicated cemetery and are established after March 10, 1967, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights or columbarium rights is made.

(2) With respect to all cemeteries or mausoleums, whether established before or after March 10, 1967, the fund shall be added to by payment, perpetually, each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights, or columbarium rights made after March 10, 1967. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into the endowment fund from the proceeds of sales of lots or burial rights, any cemetery that has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery, may apply to the cemetery commission for a waiver of the 15% or \$20.00

minimum requirement. The cemetery commission shall take testimony and investigate as it considers advisable pursuant to the application. If the cemetery commission determines that the applicant has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery and that the income from the fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement and it shall grant appropriate modifications with respect to contributions to the fund.

(3) No portion of the funds required to be set aside under section 7 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation and only the earnings from the funds shall be used for perpetual care.

(4) The endowment care fund may be administered by the board of directors itself, or by the trustees, individual or corporate, as it may select under the terms of a trust instrument or declaration. If it selects trustees to administer the fund, its liability shall be limited to reasonable care in the selection. Directors may serve as trustees if at least 2 members of the board are selected.

(5) The funds established under this section shall be invested subject to section 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.7302.

(6) In addition to all other remedies at law or in equity that any interested party may have, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by 1915 PA 280, MCL 554.351 to 554.353. The remedies granted include all endowment care fund trusts without regard to uncertainty or indefiniteness of its beneficiaries.

(7) As used in this section, "perpetual care" means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to, the cutting of grass at reasonable intervals; raking, cleaning, filling, seeding, and sodding of graves; replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

Conditional effective date.

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

- (a) Senate Bill No. 37.
- (b) Senate Bill No. 39.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

Compiler's note: Senate Bill No. 37, referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 89, Imd. Eff. July 24, 2003.

Senate Bill No. 39, also referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 91, Imd. Eff. July 24, 2003.

[No. 91]

(SB 39)

AN ACT to amend 1855 PA 87, entitled "An act relative to burying grounds; and to impose certain duties upon the department of commerce," by amending sections 35 and 35a (MCL 456.35 and 456.35a).

The People of the State of Michigan enact:

456.35 Endowment care fund; use; investment; corporate trustees; accounts; “endowment care” defined.

Sec. 35. (1) The board of trustees of any corporation organized under this act shall provide for and establish an endowment care fund, the income or proceeds from which shall be perpetually devoted for endowment care.

(2) Contributions, subscriptions, or bequests to an endowment care fund, whether made by owners of lots, or rights of burial, or by other persons, shall be invested in safe and productive securities as the board of trustees determines, or deposited in the savings department of any state, national bank, or state or federally chartered savings and loan association and only the annual interest shall be used for endowment care.

(3) Any corporation organized under this act may also be named and constituted and may act as trustee of any gift, grant, bequest, or conveyance of personal property, to the corporation, in trust for the perpetual care, maintenance and preservation of, and the planting and cultivation of trees, shrubs, flowers and plants upon any cemetery lot or lots, or part of the cemetery owned or held and maintained by the corporation, and the care, preservation, repair, upkeep, and replacement of any monument, tomb, mausoleum, fence, or other structure, or for any of the purposes described in this section that are provided in the instrument or writing creating the trust. A trust shall not be considered invalid because contravening any statute or rule of law forbidding accumulations of income.

(4) On or before June 30 of each year an account of all proceeds received during the preceding calendar year from sales of interment rights, entombment rights, or columbarium rights made after March 10, 1967, shall be filed with the cemetery commission, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the endowment care fund.

(5) As used in this section, “endowment care” means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to, the cutting of grass at reasonable intervals; raking, cleaning, filling, seeding, and sodding of graves; replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and the repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

456.35a Endowment care fund; creation; minimum requirements; administration; investment; prohibited use; legal remedies.

Sec. 35a. (1) The endowment care fund required to be set aside under section 35 for the purpose of keeping and maintaining the grounds of cemeteries established after March 10, 1967, or mausoleums not located in the confines of a dedicated cemetery and are established after March 10, 1967, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights, or columbarium rights.

(2) With respect to all cemeteries or mausoleums, whether established before or after March 10, 1967, the fund shall be added to by payment, perpetually, each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights, or columbarium rights made after March 10, 1967. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into the endowment care fund, any cemetery which has an endowment care fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery may apply to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery

commission shall take testimony and investigate as it considers advisable pursuant to the application. If the cemetery commission determines that the applicant has an endowment care fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of the cemetery and that the income from the fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement and allow such modifications with respect to contributions to the fund as it considers advisable.

(3) The endowment care fund may be administered by the board of directors, or by the fund's trustees, individual or corporate, as the fund may select under the terms of a trust instrument or declaration. If the fund selects trustees to administer the endowment care fund, the fund's liability shall be limited to reasonable care in the selection. Directors may serve as trustees if at least 2 members of the board are selected.

(4) The funds established under this section shall be invested subject to the provisions of section 7302 of the estates and protected individuals code, 1998 PA 386, MCL 700.7302.

(5) No portion of the funds required to be set aside under section 35 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from the funds shall be used for endowment care.

(6) In addition to all other remedies at law or in equity, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by 1915 PA 280, MCL 554.351 to 554.353. The remedies granted include all endowment care fund trusts without regard to uncertainty or indefiniteness of its beneficiaries.

Conditional effective date.

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

- (a) Senate Bill No. 37.
- (b) Senate Bill No. 38.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

Compiler's note: Senate Bill No. 37, referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 89, Imd. Eff. July 24, 2003.

Senate Bill No. 38, also referred to in enacting section 1, was filed with the Secretary of State July 24, 2003, and became P.A. 2003, No. 90, Imd. Eff. July 24, 2003.

[No. 92]

(SB 121)

AN ACT to amend 1941 PA 122, entitled "An act to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to regulate the importation, stamping, and disposition of certain tobacco products; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals

of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act,” by amending section 3 (MCL 205.3), as amended by 2002 PA 657.

The People of the State of Michigan enact:

205.3 Department of treasury and state treasurer; powers and duties generally.

Sec. 3. The department shall have all the powers and perform the duties formerly vested in a department, board, commission, or other agency, in connection with taxes due to or claimed by this state and in connection with unpaid accounts or amounts due to this state or any of its departments, institutions, or agencies that may be made payable to or collectible by the department created by this act. The department has the power and authority incidental to the performance of the following acts, duties, and services:

(a) The state treasurer or a duly appointed agent of the state treasurer may examine the books, records, and papers touching the matter at issue of any person or taxpayer subject to any tax, unpaid account, or amount the collection of which is charged to the department. The state treasurer or a duly appointed agent of the state treasurer may issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the inquiry or investigation being conducted by the department and to produce any books, records, or papers. The state treasurer or a duly appointed agent, referee, or examiner of the state treasurer may administer an oath to a witness in any matter before the department. The department may invoke the aid of the circuit court of this state in requiring the attendance and testimony of witnesses and the producing of books, papers, and documents. The circuit court of this state within the jurisdiction of which an inquiry is carried on, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear before the department and produce books and papers if so ordered and any evidence touching the matter in question, and failure to obey the order of the court may be punished by the court as a contempt. A person shall not be excused from testifying or from producing any books, papers, records, or memoranda in any investigation, or upon any hearing when ordered to do so by the state treasurer, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject him or her to a criminal penalty, however, a person shall not be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which he or she may testify or produce evidence, documentary or otherwise, before the department or its agent. A person testifying is not exempt from prosecution and punishment for perjury committed while testifying.

(b) After reasonable notice and public hearing, the department may promulgate rules consistent with this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department.

(c) The department may consult with the governor and the legislature on the subject of taxation, revenue, and the administration of the laws in relation to taxation and revenue, and the progress of the work of the department, including the furnishing of reports, information, and other assistance as the governor may require.

(d) The department may investigate and study all matters of taxation and revenue as the basis of recommending to the governor and the legislature those changes and

alterations in the tax laws of this state, as in the state treasurer's judgment may bring about a more adequate and just system of state and local taxation.

(e) The department may formulate a standard procedure that requires the departments, commissions, boards, institutions, and the agencies of this state that collect taxes, fees, or accounts for this state to report all sums of money due and uncollected and those uncollected items as prescribed by law and by the state treasurer. The procedure prescribed in this subdivision shall include a standard practice for receiving, receipting, safeguarding, and periodically reporting all state revenue receipts, whether current, delinquent, penalty, interest, or otherwise, and the amounts, kinds, and terms of items either collected, compromised, or still outstanding, to be summarized, studied, and reported upon as the state treasurer considers advisable.

(f) The department may periodically issue bulletins that index and explain current department interpretations of current state tax laws. Beginning 90 days after the effective date of the amendatory act that added this sentence, each bulletin or letter ruling issued by the department on or after August 18, 2000 shall be published and made available to the public in printed and electronic formats. The department may charge a reasonable fee for subscriptions to this service not to exceed the cost of printing. The money received from the sale of subscriptions shall revert to the department and be placed in the taxation manual revolving fund.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 93]

(SB 163)

AN ACT to amend 1996 PA 376, entitled "An act to create and expand certain renaissance zones; to foster economic opportunities in this state; to facilitate economic development; to stimulate industrial, commercial, and residential improvements; to prevent physical and infrastructure deterioration of geographic areas in this state; to authorize expenditures; to provide exemptions and credits from certain taxes; to create certain obligations of this state and local governmental units; to require disclosure of certain transactions and gifts; to provide for appropriations; and to prescribe the powers and duties of certain state and local departments, agencies, and officials," by amending sections 6, 8, and 8c (MCL 125.2686, 125.2688, and 125.2688c), section 6 as amended by 2002 PA 478, section 8 as amended by 1999 PA 139, and section 8c as added by 2000 PA 259.

The People of the State of Michigan enact:

125.2686 Renaissance zone review board; duties; prohibitions; modifications.

Sec. 6. (1) The board shall review all recommendations submitted by the review board and determine which applications meet the criteria contained in section 7.

(2) The board shall do all of the following:

(a) Designate renaissance zones.

(b) Subject to subsection (3), approve or reject the duration of renaissance zone status.

(c) Subject to subsection (3), approve or reject the geographic boundaries and the total area of the renaissance zone as submitted in the application.

(3) The board shall not alter the geographic boundaries of the renaissance zone or the duration of renaissance zone status described in the application unless the qualified local governmental unit or units and the local governmental unit or units in which the renaissance zone is to be located consent by resolution to the alteration.

(4) The board shall not designate a renaissance zone under section 8 before November 1, 1996 or after December 31, 1996.

(5) The designation of a renaissance zone under this act shall take effect on January 1 in the year following designation. However, for purposes of the taxes exempted under section 9(2), the designation of a renaissance zone under this act shall take effect on December 31 in the year of designation.

(6) The board shall not designate a renaissance zone under section 8a after December 31, 2002.

(7) Through December 31, 2002, a qualified local governmental unit in which a renaissance zone was designated under section 8 or 8a may modify the boundaries of that renaissance zone to include contiguous parcels of property as determined by the qualified local governmental unit and approval by the review board. The additional contiguous parcels of property included in a renaissance zone under this subsection do not constitute an additional distinct geographic area under section 4(1)(d). If the boundaries of the renaissance zone are modified as provided in this subsection, the additional contiguous parcels of property shall become part of the original renaissance zone on the same terms and conditions as the original designation of that renaissance zone.

125.2688 Designation of renaissance zones; limitation; additional zones; submission of designations to legislature; rejection of designations by concurrent resolution.

Sec. 8. (1) Except as provided in subsection (2), section 8a, and section 8c, the board shall not designate more than 9 renaissance zones within this state. Not more than 6 of the renaissance zones shall be located in urban areas and not more than 4 of the renaissance zones shall be located in rural areas. For purposes of determining whether a renaissance zone is located in an urban area or rural area under this section, if any part of a renaissance zone is located within an urban area, the entire renaissance zone shall be considered to be located in an urban area.

(2) The board may designate additional renaissance zones within this state in 1 or more qualified local governmental units if that qualified local governmental unit or units contain a military installation that was operated by the United States department of defense and has closed after 1990.

(3) Each renaissance zone designated by the board under section 8a shall be submitted to the legislature, which, by concurrent resolution adopted by a majority vote of those elected to and serving in each house, on a record roll call vote, may reject that designation no later than the earlier of 45 days following the date of the designation by the board or December 31 of the year of designation.

125.2688c Additional renaissance zones for agricultural processing facilities.

Sec. 8c. (1) The board, upon recommendation of the board of the Michigan strategic fund defined in section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004, may designate not more than 20 additional renaissance zones for agricultural processing

facilities within this state in 1 or more cities, villages, or townships if that city, village, or township or combination of cities, villages, or townships consents to the creation of a renaissance zone for an agricultural processing facility within their boundaries.

(2) Each renaissance zone designated for an agricultural processing facility under this section shall be 1 continuous distinct geographic area.

(3) The board may revoke the designation of all or a portion of a renaissance zone for an agricultural processing facility if the board determines that the agricultural processing facility fails to commence operation or ceases operation in a renaissance zone designated under this section.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 94]

(SB 239)

AN ACT to amend 1851 PA 156, entitled “An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act,” by amending section 11 (MCL 46.11), as amended by 1998 PA 97.

The People of the State of Michigan enact:

46.11 Powers of county board of commissioners.

Sec. 11. A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following:

(a) Purchase or lease for a term not to exceed 20 years, real estate necessary for the site of a courthouse, jail, clerk’s office, or other county building in that county.

(b) Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.

(c) Authorize the sale or lease of real estate belonging to the county, and prescribe the manner in which a conveyance of the real estate is to be executed.

(d) Erect the necessary buildings for jails, clerks’ offices, and other county buildings, and prescribe the time and manner of erecting them.

(e) Borrow or raise by tax upon the county those funds authorized by law. The exercise of the authority granted by this subdivision is subject to any voting requirement provided by the law authorizing the borrowing or tax if different from the voting requirement under section 3.

(f) Provide for the repayment of a loan made by the board, by tax upon the county. The loan shall be repaid within 15 years after the date of the loan, except that a loan to erect a county building for a public function shall be repaid within 30 years after the date of the loan.

(g) Prescribe and fix the salaries and compensation of employees of the county if not fixed by law and, except in a county having a board of county auditors, adjust claims against the county. The sum allowed in the adjustment of a claim is subject to appeal as provided by law.

(h) Direct and provide for the raising of money necessary to defray the current expenses and charges of the county and the necessary charges incident to or arising from the execution of the board's lawful authority, subject to the limitations prescribed in this act. The county board of commissioners may borrow in a year, in anticipation of the levy or collection of taxes for the year, a sum of money, not exceeding 50% of the tax to be levied or collected for the general fund of the county, necessary to defray current expenses of the county. The money borrowed shall be repaid from the tax when levied and collected.

(i) Authorize the making of a new tax roll.

(j) By majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county, and pursuant to section 10b provide suitable sanctions for the violation of those ordinances. The board may change the limits of a city, village, or school district within the county as provided by law. If there is not a general law governing the subject, or if a change cannot be made pursuant to a general law, the board may change the limits of the village upon petition of at least 10% of the resident taxpayers. An ordinance or act of incorporation provided in this subdivision shall take effect when notice of the adoption is published in a newspaper of general circulation in the county. The clerk of the county board of commissioners shall engross each ordinance or act, and it shall be signed by the chairperson of the county board of commissioners and certified by the clerk of the county board of commissioners. If, within 50 days after the county board of commissioners adopts an ordinance or act, a petition signed by not less than 20% of the electors residing in the district to be affected by the ordinance or act is filed with the county clerk asking that the ordinance or act be submitted to electors of the district to be affected by the ordinance or act for approval or rejection, then the ordinance or act shall not take effect until it is approved by a majority of the electors of the district affected voting on that issue at a regular or special election called for that purpose. The county board of commissioners shall provide the manner of submitting the ordinance or act to the electors for their approval and of determining the result of the election.

(k) Require a county officer whose salary or compensation is paid by the county to make a report under oath to the county board of commissioners on any subject connected with the duties of that office and require the officer to give a bond reasonable or necessary for the faithful performance of the duties of the office. An officer who neglects or refuses either to make a report or give a bond within a reasonable time after being required to do so may be removed from office by the board by a vote of 2/3 of the members elected or appointed, and the office declared vacant. The board may fill the vacancy for the unexpired portion of the term for which the officer was elected or appointed. If an election occurs before the expiration of the unexpired term, and if the office is elective, the vacancy shall be filled at that election. The board shall give reasonable notice of the election to fill the vacancy.

(l) Represent the county and have the care and management of the property and business of the county if other provisions are not made.

(m) Establish rules and regulations in reference to the management of the interest and business concerns of the county as the board considers necessary and proper in all matters

not especially provided for in this act or under the laws of this state. The county board of commissioners shall not audit or allow a claim, including a bill or charge, against the county unless the claim has been filed with the county clerk of the county before the fourth day of a regular meeting of the board, or before the second day of an adjourned or other meeting, the claim is contracted by the board during the session of the board or the claim is for mileage and per diem of the members of the board. The county clerk shall keep a book of all claims in the order in which the claims are presented, giving the name of each claimant and the amount and date of presentation of each claim. The book, after the time prescribed for the presentation of claims, shall be delivered to the chairperson for the use of the board. At the October session, the board, by a vote of 2/3 of the members, may receive and allow accounts that have wholly accrued during the session.

(n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

(o) If the county has an appointed county manager or other appointed chief administrative officer or a county controller, the county board of commissioners may enter into an employment contract with that officer. The term of the employment contract may extend beyond the terms of the members of the county board of commissioners. The term of the employment contract shall be 3 years or less, unless the employment contract is entered into on or after August 1 of an even-numbered year, in which case the term of the employment contract shall be 1 year or less. However, in a county organized under 1966 PA 293, MCL 45.501 to 45.521, with an appointed chief administrative officer, an employment contract with the appointed chief administrative officer shall be for the term provided by section 11a of 1966 PA 293, MCL 45.511a. An employment contract under this subdivision shall be in writing and shall specify the compensation to be paid to the officer, any procedure for changing the compensation, any fringe benefits, and any other conditions of employment. If the officer serves at the pleasure of the county board of commissioners, the contract shall so state and may provide for severance pay or other benefits in the event the employment of the officer is terminated at the pleasure of the county board of commissioners.

(p) Establish rules consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, for the manner of proceeding before the board.

(q) Acquire by exchange land needed for county purposes, including the purchase of land to be used in exchange for other land of approximate equal value owned by the federal government and needed for county purposes.

(r) Grant or loan funds to a nonprofit corporation organized for the purpose of providing loans for private sector economic development initiatives. A grant or loan under this subdivision shall not be derived from ad valorem taxes except for ad valorem taxes approved by a vote of the people for economic development. The county shall establish an application process for proposals to receive a grant or loan under this subdivision. The awarding of a grant or loan under this subdivision shall be made at a public hearing of the county board of commissioners. The grant or loan contract shall require a report to the

county board of commissioners regarding the activities of the recipient and the degree to which the recipient has met the stated public purpose of the funding.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 95]

(SB 434)

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 8727, 8729, 8731, 8733, 8735, 8827, 8829, and 8835 (MCL 600.8727, 600.8729, 600.8731, 600.8733, 600.8735, 600.8827, 600.8829, and 600.8835), sections 8727, 8729, 8731, and 8733 as added by 1994 PA 12 and sections 8735, 8827, 8829, and 8835 as added by 1995 PA 54.

The People of the State of Michigan enact:

600.8727 Municipal civil infraction; civil fine, costs, justice system assessments, damages, and expenses.

Sec. 8727. (1) A municipal civil infraction is not a lesser included offense of a criminal offense or an ordinance violation that is not a civil infraction.

(2) If a defendant is determined to be responsible or responsible “with explanation” for a municipal civil infraction, the judge or district court magistrate may order the defendant to pay a civil fine, costs as provided in subsection (3), the justice system assessment as provided in subsection (4), and, if applicable, damages and expenses as provided in section 8733(2). In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, assessment, and damages and expenses within a specified period of time or in specified installments. Otherwise, the civil fine, costs, assessment, and damages and expenses are due immediately.

(3) If a defendant is ordered to pay a civil fine under subsection (2), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the municipal civil infraction, up to the entry of judgment. Costs of not more than \$500.00 shall be ordered. Until September 30, 2003, the amount of costs ordered shall be not less than \$9.00. Except as otherwise provided by law, costs shall be payable to the general fund of the plaintiff.

(4) Effective October 1, 2003, in addition to any fine or cost ordered to be paid under subsection (2), the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$10.00. Upon payment of the assessment, the clerk of the

court shall transmit the assessment collected to the state treasurer for deposit in the justice system fund created in section 181.

(5) In addition to ordering the defendant to pay a civil fine, costs, a justice system assessment, and damages and expenses, the judge or district court magistrate may issue a writ or order under section 8302.

(6) A district court magistrate shall impose the sanctions permitted under subsections (2) and (5) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(7) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for municipal civil infractions that occur within the district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all municipal civil infractions. A schedule may exclude cases on the basis of a defendant's prior record of municipal civil infractions.

(8) A default in the payment of a civil fine, costs, assessment, or damages or expenses ordered under subsection (2), (3), or (4) or an installment of the fine, costs, assessment, or damages or expenses may be collected by a means authorized for the enforcement of a judgment under chapter 40 or chapter 60.

(9) If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under section 8729, 8731, or 8733, as applicable.

(10) A defendant who fails to answer a citation or notice to appear in court for a municipal civil infraction is guilty of a misdemeanor.

600.8729 Payment of fine, costs, assessment, damages, or expenses; default as civil contempt.

Sec. 8729. (1) If a defendant defaults in the payment of a civil fine, costs, assessment, or, if applicable, damages or expenses as provided in section 8733(2) if applicable, or any installment, as ordered pursuant to section 8727, the court, upon the motion of the plaintiff or upon its own motion, may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance.

(2) If a corporation or an association is ordered to pay a civil fine, costs, assessment, or damages or expenses, the individuals authorized to make disbursement shall pay the fine, costs, assessment, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this section.

(3) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.

(4) If it appears that the default in the payment of a fine, costs, assessment, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine, costs, assessment, or damages or expenses.

(5) The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be specified in the order of commitment and shall not exceed 1 day for each \$30.00 due. A person committed for nonpayment of a civil fine, costs, assessment, or damages or expenses shall be given credit toward payment for

each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of \$30.00 per day.

(6) A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, assessment, or damages or expenses shall not be discharged from custody until 1 of the following occurs:

- (a) The defendant is credited with the amount due pursuant to subsection (5).
- (b) The amount due is collected through execution of process or otherwise.
- (c) The amount due is satisfied pursuant to a combination of subdivisions (a) and (b).

(7) The civil contempt shall be purged upon discharge of the defendant pursuant to subsection (6).

600.8731 Violation involving land, building, or other structure; non-payment of fines, costs, assessments, or installment; lien.

Sec. 8731. (1) If a defendant does not pay a civil fine, costs, or assessment or an installment ordered under section 8727 within 30 days after the date on which payment is due under section 8727 in a municipal civil infraction action brought for a violation involving the use or occupation of land or a building or other structure, the plaintiff may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fines, costs, and assessment with the register of deeds for the county in which the land, building, or structure is located. The court order shall not be recorded unless a legal description of the property is incorporated in or attached to the court order. The lien is effective immediately upon recording of the court order with the register of deeds.

(2) The court order recorded with the register of deeds shall constitute notice of the pendency of the lien. In addition, a written notice of the lien shall be sent by the plaintiff by first-class mail to the owner of record of the land, building, or structure at the owner's last known address.

(3) The lien may be enforced and discharged by a county, city, village, or township in the manner prescribed by its charter, by the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or by an ordinance duly passed by the governing body of the county, city, village, or township. However, property is not subject to sale under section 60 of the general property tax act, 1893 PA 206, MCL 211.60, for nonpayment of a civil fine, costs, or assessment or an installment ordered under section 8727 unless the property is also subject to sale under section 60 of the general property tax act, 1893 PA 206, MCL 211.60, for delinquent property taxes.

(4) A lien created under this section has priority over any other lien unless 1 or more of the following apply:

- (a) The other lien is a lien for taxes or special assessments.
- (b) The other lien is created before May 1, 1994.
- (c) Federal law provides that the other lien has priority.
- (d) The other lien is recorded before the lien under this section is recorded.

(5) A political subdivision may institute an action in a court of competent jurisdiction for the collection of the judgment imposed by a court order for a municipal civil infraction. However, an attempt by a county, city, village, or township to collect the judgment by any process does not invalidate or waive the lien upon the land, building, or structure.

(6) A lien provided for by this section shall not continue for a period longer than 5 years after a copy of the court order imposing a fine, costs, or assessment is recorded, unless within that time an action to enforce the lien is commenced.

600.8733 Trailway municipal civil infraction; seizure and impoundment of vehicle; lien; bond; payments; forfeiture and application of bond; enforcement of lien by foreclosure sale; notice; distribution of proceeds.

Sec. 8733. (1) An authorized local official may seize and impound a vehicle operated in the commission of a trailway municipal civil infraction. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, or assessment that the defendant may be ordered to pay under section 8727 and any expenses described in subsection (2) that the defendant may be ordered to pay under section 8727. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of \$750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the trailway municipal civil infraction or upon payment of the fine, costs, assessment, and damages and expenses.

(2) In a trailway municipal civil infraction action, an order under section 8727 may require the defendant to pay 1 or both of the following:

(a) The amount of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of the ordinance. Money collected under this subdivision shall be distributed to the governmental entity that has jurisdiction over the recreational trailway.

(b) The reasonable expense of impoundment under subsection (1). Money collected under this subdivision shall be distributed to the governmental entity employing the authorized local official who impounded the vehicle involved in the trailway municipal civil infraction.

(3) If the court determines that the defendant is responsible for the trailway municipal civil infraction and the defendant defaults in the payment of the fine, costs, assessment, or damages or expenses, or in any installment, as ordered pursuant to section 8727, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, assessment, damages, expenses, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity whose ordinance was violated. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047.

(4) Not less than 21 days before the foreclosure sale, the attorney for the governmental entity whose ordinance was violated shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).

(b) To the clerk of the court for the payment of the fine, costs, assessment, damages, and expenses that the defendant was ordered to pay under section 8727.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

600.8735 Municipal civil infraction; additional costs.

Sec. 8735. If the defendant in a municipal civil infraction action is determined responsible for a municipal civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 8727, may assess additional costs incurred in compelling the appearance of the defendant, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

600.8827 Sanctions.

Sec. 8827. (1) A state civil infraction is not a lesser included offense of a criminal offense.

(2) If a defendant is determined to be responsible or responsible “with explanation” for a state civil infraction, the judge or district court magistrate may order the defendant to pay a civil fine as provided by law and costs as provided in subsection (3) and the justice system assessment provided in subsection (4). In the order of judgment, the judge or district court magistrate may grant a defendant permission to pay a civil fine, costs, and assessment within a specified period of time or in specified installments. Otherwise, the civil fine, costs, and assessment are payable immediately.

(3) If a defendant is ordered to pay a civil fine under subsection (2), the judge or district court magistrate shall summarily tax and determine the costs of the action, which are not limited to the costs taxable in ordinary civil actions and may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the state civil infraction, up to the entry of judgment. Costs of not more than \$500.00 shall be ordered. Until September 30, 2003, the amount of costs ordered shall be not less than \$9.00. Costs in a state civil infraction action in the district court shall be distributed as provided in sections 8379 and 8381. Beginning October 1, 2003, costs ordered in a state civil infraction action shall be distributed as provided in section 8379. Costs in a state civil infraction action in a municipal court shall be paid to the county.

(4) Effective October 1, 2003, in addition to any fine or cost ordered to be paid under subsection (2) or (3), the judge or district court magistrate shall order the defendant to pay a justice system assessment of \$10.00. Upon payment of the assessment, the clerk of the court shall transmit the assessment collected to the state treasurer for deposit in the justice system fund created in section 181.

(5) A district court magistrate shall impose the sanctions permitted under subsection (2) only to the extent expressly authorized by the chief judge or only judge of the district court district.

(6) Each district of the district court and each municipal court may establish a schedule of civil fines, costs, and assessments to be imposed for state civil infractions that occur within the district or city. If a schedule is established, it shall be prominently posted and readily available for public inspection. A schedule need not include all violations that are designated by law as state civil infractions.

(7) A default in the payment of a civil fine, costs, or assessment ordered under subsection (2), (3), or (4) or an installment of the fine, costs, or assessment may be collected by a means authorized for the enforcement of a judgment under chapter 40 or chapter 60.

(8) Not less than 28 days after a defendant fails to appear in response to a citation issued for, or fails to comply with an order or judgment involving, a state civil infraction, the court shall give notice by ordinary mail, addressed to the defendant’s last known address, that if the defendant fails to appear or fails to comply with the order or judgment described in this subsection within 14 days after the notice is issued, the court will give to

the secretary of state notice of that failure. Upon receiving notice of that failure, the secretary of state shall not issue or renew an operator's or chauffeur's license for the defendant until both of the following occur:

(a) The court informs the secretary of state that the defendant has resolved all outstanding matters regarding each notice or citation.

(b) The defendant has paid to the court a \$45.00 driver license reinstatement fee. If the court determines that the defendant is not responsible for any violation for which the defendant's license was not issued or renewed under this subsection, the court shall waive the driver license reinstatement fee.

(9) A defendant who fails to comply with an order or judgment issued under this section is guilty of a misdemeanor.

600.8829 Default in payment of fines, costs, assessment, or installment.

Sec. 8829. (1) If a defendant defaults in the payment of a civil fine, costs, or assessment or of any installment, as ordered pursuant to section 8827, the court, upon the motion of the plaintiff or upon its own motion, may require the defendant to show cause why the default should not be treated as in civil contempt and may issue a summons, order to show cause, or a bench warrant of arrest for the defendant's appearance.

(2) If a corporation or an association is ordered to pay a civil fine, costs, or assessment, the individuals authorized to make disbursement shall pay the fine or costs, and their failure to do so shall be civil contempt unless they make the showing required in this section.

(3) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the civil fine, costs, or assessment, or any combination of those amounts, is paid.

(4) If it appears that the default in the payment of a fine, costs, or assessment does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs.

(5) The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, or assessment shall be specified in the order of commitment and shall not exceed 1 day for each \$30.00 of the fine and costs. A person committed for nonpayment of a civil fine or costs shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of \$30.00 per day.

(6) A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, or assessment shall not be discharged from custody until 1 of the following occurs:

(a) The defendant is credited with the amount due pursuant to subsection (5).

(b) The amount due is collected through execution of process or otherwise.

(c) The amount due is satisfied pursuant to a combination of subdivisions (a) and (b).

(7) The civil contempt shall be purged upon discharge of the defendant pursuant to subsection (6).

600.8835 Additional costs.

Sec. 8835. If the defendant in a state civil infraction action is determined responsible for a state civil infraction, the judge or district court magistrate, in addition to any fine, costs, and assessment imposed under section 8827, may assess additional costs incurred in

compelling the appearance of the defendant, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 96]

(SB 435)

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 8381 (MCL 600.8381), as amended by 1996 PA 374.

The People of the State of Michigan enact:

600.8381 Fines and costs; convictions; civil infraction determinations, guilty pleas, or civil infraction admission; disposition; court filing fee report; definitions.

Sec. 8381. (1) Until October 1, 2003, when fines and costs are assessed by a magistrate, a traffic bureau, or a judge of the district court, not less than \$9.00 shall be assessed as costs and collected for each conviction or civil infraction determination and each guilty plea or civil infraction admission except for parking violations. Of the costs assessed and collected, for each conviction or civil infraction determination and each guilty plea or civil infraction admission, \$9.00 shall be paid to the clerk of the district court.

(2) The clerk of the district court, on or before the fifteenth day of the month following the month in which costs are collected under subsection (1), shall transmit the following amounts:

(a) Until October 1, 2003, the clerk shall transmit 45 cents of the costs collected to the executive secretary of the Michigan judges retirement system created by the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and shall transmit \$8.55 of the costs collected to the state treasurer. Of each \$8.55 received, the state treasurer shall deposit 30 cents in the legislative retirement fund created by the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080; \$4.25 in the court equity fund created under section 151b; and shall deposit the balance in the state court fund created by section 151a.

(b) Beginning October 1, 2003, the clerk shall transmit \$9.00 of any costs assessed before October 1, 2003 to the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(3) Until October 1, 2003, the clerk of the district court shall prepare and submit a court filing fee report to the executive secretary of the Michigan judges retirement system created by the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, at the same time the clerk of the district court transmits the portion of the costs collected under this section to the executive secretary.

(4) Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate, the defendant shall be ordered to pay costs of not less than \$45.00 for each conviction for a serious misdemeanor or a specified misdemeanor or costs of not less than \$40.00 for each conviction for any other misdemeanor or ordinance violation.

(5) Beginning October 1, 2003, when fines and costs are assessed by a judge or district court magistrate in a civil infraction action, the defendant shall be ordered to pay the state assessment required by section 8727 or 8827 of this act or by section 907 of the Michigan vehicle code, 1949 PA 300, MCL 257.907.

(6) As used in this section:

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

(b) “Serious misdemeanor” means that term as defined in section 61 of the crime victim’s rights act, 1985 PA 87, MCL 780.811.

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

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 97]

(SB 439)

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 600.9948) by adding section 181.

The People of the State of Michigan enact:

600.181 Justice system fund; creation; use; disposition; investment; distributions.

Sec. 181. (1) The justice system 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 justice system fund deposits of proceeds from the collection of revenue from court assessments and costs designated by law for deposit in the fund 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 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) In the state fiscal year beginning October 1, 2003, the state treasurer shall distribute the proceeds of the fund monthly as follows:

(a) To the secondary road patrol and training fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, an amount equal to \$10.00 multiplied by the number of civil infraction actions on which assessments are collected each month under section 629e or 907 of the Michigan vehicle code, 1949 PA 300, MCL 257.629e and 257.907.

(b) The balance of the fund remaining after the allocation in subdivision (a) shall be distributed as follows:

(i) To the highway safety fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 24.7% of the fund balance.

(ii) To the jail reimbursement program fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 13% of the fund balance.

(iii) To the Michigan justice training fund created in section 5 of 1982 PA 302, MCL 18.425, 13% of the fund balance.

(iv) To the secretary of the legislative retirement system for deposit with the state treasurer in the retirement fund created in the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, 1.2% of the fund balance.

(v) To the drug treatment courts fund created in section 185, 2.35% of the fund balance.

(vi) To the state forensic lab fund created in section 3 of the forensic laboratory funding act, 1994 PA 35, MCL 12.203, 3.9% of the fund balance.

(vii) To the state court fund created in section 151a, 14.3% of the fund balance.

(viii) To the court equity fund created in section 151b, 25.55% of the fund balance.

(ix) To the state treasurer for monitoring of collection and distribution of fund receipts, 1% of the fund balance.

(x) To the state court administrative office for management assistance and audit of trial court collections, 1% of the fund balance.

(4) In the state fiscal year beginning October 1, 2004 and each fiscal year following, the state treasurer shall distribute the proceeds of the fund monthly as follows:

(a) To the secondary road patrol and training fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, an amount equal to \$10.00 multiplied by the number of civil infraction actions on which assessments are collected each month under section 629e or 907 of the Michigan vehicle code, 1949 PA 300, MCL 257.629e and 257.907.

(b) The balance of the fund remaining after the allocation in subdivision (a) shall be distributed as follows:

(i) To the highway safety fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 24.8% of the fund balance.

(ii) To the jail reimbursement program fund created in section 629e of the Michigan vehicle code, 1949 PA 300, MCL 257.629e, 12.4% of the fund balance.

(iii) To the Michigan justice training fund created in section 5 of 1982 PA 302, MCL 18.425, 12.4% of the fund balance.

(iv) To the secretary of the legislative retirement system for deposit with the state treasurer in the retirement fund created in the Michigan legislative retirement system act, 1957 PA 261, MCL 38.1001 to 38.1080, 1.15% of the fund balance.

(v) To the drug treatment courts fund created in section 185, 2.85% of the fund balance.

(vi) To the state forensic lab fund created in section 3 of the forensic laboratory funding act, 1994 PA 35, MCL 12.203, 5.6% of the fund balance.

(vii) To the state court fund created in section 151a, 13.3% of the fund balance.

(viii) To the court equity fund created in section 151b, 25.5% of the fund balance.

(ix) To the state treasurer for monitoring of collection and distribution of fund receipts, 1% of the fund balance.

(x) To the state court administrative office for management assistance and audit of trial court collections, 1% of the fund balance.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 98]

(SB 442)

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," by amending sections 16a, 44a, and 76a (MCL 780.766a, 780.794a, and 780.826a), as added by 2000 PA 503.

The People of the State of Michigan enact:

780.766a Fines, costs, and assessments or payments other than victim payments; allocation of payments.

Sec. 16a. (1) If a person is subject to any combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a person is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of each payment collected by the court

from that person shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, supervision fees, and other assessments or payments. If any fines, costs, supervision fees, or other assessments or payments remain unpaid after all of the victim payments have been paid, any additional money collected shall be applied to payment of those fines, costs, supervision fees, or other assessments or payments. If any victim payments remain unpaid after all of the fines, costs, supervision fees, or other assessments or payments have been paid, any additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving prosecutions for violations of state law, money allocated under subsection (2) for payment of fines, costs, probation and parole supervision fees, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of other costs.

(c) Payment of fines.

(d) Payment of probation or parole supervision fees.

(e) Payment of assessments and other payments, including reimbursement to third parties who reimbursed a victim for his or her loss.

(4) In cases involving prosecutions for violations of local ordinances, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and other costs.

(c) Payment of assessments and other payments.

(5) As used in this section, “victim payment” means restitution ordered to be paid to the victim, to the victim’s estate, but not to a person who reimbursed the victim for his or her loss; or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

780.794a Allocation of payments from juveniles.

Sec. 44a. (1) If a juvenile is subject to any combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding, money collected from that juvenile for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a juvenile is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of each payment collected by the court from that juvenile shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, supervision fees, and other assessments or payments. If any fines, costs, supervision fees, or other assessments or payments remain unpaid after all of the victim payments have been paid, any additional money collected shall be applied to payment of those fines, costs, supervision fees, or other assessments or payments. If any victim payments remain unpaid after all of the fines, costs, supervision fees, or other assessments or payments have been paid, any additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving prosecutions for violations of state law, money allocated under subsection (2) for payment of fines, costs, probation and parole supervision fees, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of other costs.

(c) Payment of fines.

(d) Payment of probation or parole supervision fees.

(e) Payment of assessments and other payments, including reimbursement to third parties who reimbursed a victim for his or her loss.

(4) In cases involving prosecutions for violations of local ordinances, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and other costs.

(c) Payment of assessments and other payments.

(5) As used in this section, “victim payment” means restitution ordered to be paid to the victim, to the victim’s estate, but not to a person who reimbursed the victim for his or her loss; or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

780.826a Allocation of payments.

Sec. 76a. (1) If a person is subject to any combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments shall be allocated as provided in this section.

(2) Except as otherwise provided in this subsection, if a person is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of each payment collected by the court from that person shall be applied to payment of victim payments, and the balance shall be applied to payment of fines, costs, supervision fees, and other assessments or payments. If any fines, costs, supervision fees, or other assessments or payments remain unpaid after all of the victim payments have been paid, any additional money collected shall be applied to payment of those fines, costs, supervision fees, or other assessments or payments. If any victim payments remain unpaid after all of the fines, costs, supervision fees, or other assessments or payments have been paid, any additional money collected shall be applied toward payment of those victim payments.

(3) In cases involving prosecutions for violations of state law, money allocated under subsection (2) for payment of fines, costs, probation and parole supervision fees, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of other costs.

(c) Payment of fines.

(d) Payment of probation or parole supervision fees.

(e) Payment of assessments and other payments, including reimbursement to third parties who reimbursed a victim for his or her loss.

(4) In cases involving prosecutions for violations of local ordinances, money allocated under subsection (2) for payment of fines, costs, and assessments or payments other than victim payments shall be applied in the following order of priority:

(a) Payment of the minimum state cost prescribed by section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j.

(b) Payment of fines and other costs.

(c) Payment of assessments and other payments.

(5) As used in this section, “victim payment” means restitution ordered to be paid to the victim, to the victim’s estate, but not to a person who reimbursed the victim for his or her loss; or an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 99]

(SB 444)

AN ACT to amend 1994 PA 35, entitled “An act to create the state forensic laboratory fund; to authorize local forensic laboratory funds; to provide for assessments against certain criminal defendants; to provide for expenditures from the forensic laboratories funds; to make certain appropriations; and to prescribe the powers and duties of certain departments and agencies and local units of government,” by amending sections 5, 6, and 7 (MCL 12.205, 12.206, and 12.207), section 6 as amended by 1998 PA 98.

The People of the State of Michigan enact:

12.205 Conduct of forensic test; advising prosecuting attorney.

Sec. 5. The investigating officer of each criminal case being adjudicated shall advise the prosecuting attorney if a forensic laboratory has conducted a forensic test in the case.

12.206 Assessments.

Sec. 6. (1) The court shall order each person convicted and sentenced before October 1, 2003 of 1 or more crimes in the case to pay an assessment of \$150.00 if 1 or more of the following apply:

(a) The court is notified pursuant to section 5 that a forensic laboratory has conducted a forensic test in the investigation of the case.

(b) The person is convicted of a CSC offense.

(2) The assessment required under subsection (1) is in addition to any fine, costs, or other assessments imposed by the court. An assessment required under subsection (1)

shall be ordered upon the record, and shall be listed separately in the judgment of sentence or order of probation.

(3) After reviewing a verified petition by the defendant against whom an assessment is imposed, the court may suspend payment of all or part of the assessment if it determines the defendant is unable to pay the assessment.

(4) The court, prosecuting attorney, and originating investigating law enforcement agency may each retain 5% of all assessments or portions of assessments collected for costs incurred pursuant to this section and shall transmit that money to their respective funding units. On the last day of each month, the clerk of the court shall transmit the remainder of assessments or portions of assessments collected under this section as follows:

(a) Assessments ordered and collected before October 1, 2003 shall be transmitted to the department of treasury for deposit in the state forensic laboratory fund created in section 3.

(b) Assessments ordered before October 1, 2003, but collected on or after October 1, 2003, shall be transmitted to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

12.207 Distributions from state laboratory fund; expenses incurred by municipality; application for reimbursement; reports; number of investigations; distribution and proceeds to municipality; determination of amount; appropriation and use of money.

Sec. 7. (1) Beginning October 1, 2003, the department of treasury, each month, shall distribute proceeds of the state laboratory fund that are received from the justice system fund under section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181, as follows:

(a) For the state fiscal year beginning October 1, 2003, 19% to the department of state police to defray the cost of complying with the requirements of DNA profiling and DNA retention under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, with the balance of the fund being available for distribution under subsections (2) to (5).

(b) For the state fiscal year beginning October 1, 2004 and subsequent state fiscal years, 45% to the department of state police to defray the cost of complying with the requirements of DNA profiling and DNA retention under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, with the balance of the fund being available for distribution under subsections (2) to (5).

(2) A municipality that maintains a forensic laboratory and that incurred expenses for a forensic test by that laboratory may apply for reimbursement of those expenses on a form provided by the department of treasury.

(3) A municipality applying under subsection (2) shall report to the department of treasury the number of criminal investigations in the preceding year for which the municipality's forensic laboratory performed 1 or more forensic tests. The department of state police shall report to the department of treasury in the manner prescribed by that department the number of criminal investigations in the preceding year for which the department of state police performed 1 or more forensic tests, whether the investigation was conducted by the department of state police or by the law enforcement agency of a municipality. The department of state police shall also report the number of DNA identification profilings performed pursuant to the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(4) The number of investigations reported pursuant to subsection (3) shall exclude any investigation reported in a previous year.

(5) After the distributions under subsection (1) are made, the department of treasury shall distribute proceeds of the state forensic laboratory fund annually to a municipality applying under this section in an amount determined by multiplying the remaining amount in the fund for that period by a fraction, the numerator of which is the total of investigations reported pursuant to subsection (3) by that municipality for that period and the denominator of which is the total of investigations and DNA identification profilings reported pursuant to subsection (3) for that period. The balance of the fund for that period after distributions under subsection (1) and this subsection shall be credited to the department of state police.

(6) The legislature shall appropriate money in the state forensic laboratory fund credited to the department of state police to that department exclusively for forensic science services. The use of money appropriated pursuant to this section may include, but is not limited to, any of the following:

(a) Costs incurred in providing forensic tests in connection with criminal investigations conducted within this state.

(b) Purchasing or maintaining equipment used in performing forensic tests.

(c) Providing for the continuing education, training, and professional development of regularly employed laboratory personnel.

(d) Payment of expenses for implementing and performing procedures for DNA identification profiling under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(7) Money appropriated from the state forensic laboratory fund to the division of the department of state police concerned with forensic sciences shall be in addition to any allocations made pursuant to existing law and is intended to enhance appropriations from the general fund and not to replace or supplant those appropriations.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 100]

(SB 447)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 520m (MCL 750.520m), as amended by 2001 PA 89.

The People of the State of Michigan enact:

750.520m DNA identification profiling; chemical testing; manner of collecting and transmitting samples; existing DNA identification profile; disclosure; assessment; report; definitions.

Sec. 520m. (1) A person shall provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and shall provide samples for chemical testing for a determination of his or her secretor status if any of the following apply:

(a) The person is found responsible for a violation of section 83, 91, 316, 317, or 321, a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g, or a violation of section 167(1)(c) or (f) or 335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a.

(b) The person is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

(i) A violation of section 145a, enticing a child for immoral purposes.

(ii) A violation of section 167(1)(c), (f), or (i), disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.

(iii) A violation of section 335a, indecent exposure.

(iv) A violation of section 451, first and second prostitution violations.

(v) A violation of section 454, leasing a house for purposes of prostitution.

(vi) A violation of section 462, female under the age of 17 in a house of prostitution.

(2) Notwithstanding subsection (1), if at the time the person is convicted of or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the person that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the person is not required to provide another sample or pay the fee required under subsection (6).

(3) The county sheriff or the investigating law enforcement agency shall collect and transmit the samples in the manner required under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(4) An investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of a person pursuant to subsection (1) shall forward the DNA identification profile to the department of state police at or before the time of the person's sentencing or disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the person.

(5) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(6) Until October 1, 2003, the court shall order each person found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of \$60.00. The

assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.

(7) An assessment required under subsection (6) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.

(8) After reviewing a verified petition by a person against whom an assessment is imposed under subsection (6), the court may suspend payment of all or part of the assessment if it determines the person is unable to pay the assessment.

(9) The court that imposes the assessment prescribed under subsection (6) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments or portions of assessments collected under this section as follows:

(a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

(b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(10) Beginning December 31, 2002, the director of the department of state police shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (6) to all of the following:

(a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.

(b) The house of representatives appropriations subcommittee on state police and military affairs.

(c) The senate appropriations subcommittee on state police.

(11) As used in this section:

(a) “DNA identification profile” and “DNA identification profiling” mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.

(b) “Investigating law enforcement agency” means the law enforcement agency responsible for the investigation of the offense for which the person is convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections.

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

(d) “Sample” means a portion of a person’s blood, saliva, or tissue collected from the person.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 101]**(SB 448)**

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 3 of chapter XI (MCL 771.3), as amended by 1998 PA 520.

The People of the State of Michigan enact:

CHAPTER XI

771.3 Probation; conditions; entry of order into LEIN; costs as part of sentence of probation; compliance as condition of probation; revocation of probation.

Sec. 3. (1) The sentence of probation shall include all of the following conditions:

(a) During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.

(b) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting his or her application for probation.

(c) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(d) If convicted of a felony, the probationer shall pay a probation supervision fee as prescribed in section 3c of this chapter.

(e) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate as provided in chapter IX.

An order for payment of restitution may be modified and shall be enforced as provided in chapter IX.

(f) The probationer shall pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905.

(g) The probationer shall pay the minimum state cost prescribed by section 1j of chapter IX.

(h) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the probationer shall comply with that act.

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

(a) Be imprisoned in the county jail for not more than 12 months, at the time or intervals, which may be consecutive or nonconsecutive, within the probation as the court determines. However, the period of confinement shall not exceed the maximum period of imprisonment provided for the offense charged if the maximum period is less than 12 months. The court may permit day parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The court may permit a work or school release from jail. This subdivision does not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(b) Pay immediately or within the period of his or her probation a fine imposed when placed on probation.

(c) Pay costs pursuant to subsection (6).

(d) Pay any assessment ordered by the court other than an assessment described in subsection (1)(f).

(e) Engage in community service.

(f) Agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court.

(g) Participate in inpatient or outpatient drug treatment.

(h) Participate in mental health treatment.

(i) Participate in mental health or substance abuse counseling.

(j) Participate in a community corrections program.

(k) Be under house arrest.

(l) Be subject to electronic monitoring.

(m) Participate in a residential probation program.

(n) Satisfactorily complete a program of incarceration in a special alternative incarceration unit as provided in section 3b of this chapter.

(o) Be subject to conditions reasonably necessary for the protection of 1 or more named persons.

(p) Reimburse the county for expenses incurred by the county in connection with the conviction for which probation was ordered as provided in the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93.

(3) Subsection (2) may be applied to a person who is placed on probation for life pursuant to sections 1(4) and 2(3) of this chapter for the first 5 years of that probation.

(4) The court may impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper.

(5) If an order or amended order of probation contains a condition for the protection of 1 or more named persons as provided in subsection (2)(o), the court or a law enforcement

agency within the court's jurisdiction shall enter the order or amended order into the law enforcement information network. If the court rescinds the order or amended order or the condition, the court shall remove the order or amended order or the condition from the law enforcement information network or notify that law enforcement agency and the law enforcement agency shall remove the order or amended order or the condition from the law enforcement information network.

(6) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

(7) If the court imposes costs as part of a sentence of probation, all of the following apply:

(a) The court shall not require a probationer to pay costs under subsection (2) unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs under subsection (2), the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs under subsection (1)(g) or subsection (2)(c) and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(8) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment to be made immediately or the court may provide for payment to be made within a specified period of time or in specified installments.

(9) If a probationer is ordered to pay costs as part of a sentence of probation, compliance with that order shall be a condition of probation. The court may revoke probation if the probationer fails to comply with the order and if the probationer has not made a good faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other special circumstances that may have a bearing on the probationer's ability to pay. The proceedings provided for in this subsection are in addition to those provided in section 4 of this chapter.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 2003.

This act is ordered to take immediate effect.

Approved July 24, 2003.

Filed with Secretary of State July 24, 2003.

[No. 102]

(SB 449)

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