(b) A reverse vending machine manufacturer may not apply money received under this subsection to the purchase price of a new reverse vending machine that does not meet the requirements of the reverse vending machine antifraud act.

(c) The dealer shall operate the new reverse vending machine at the retail store for which it was acquired. However, if the dealer ceases retail sale of beverages in beverage containers at that new store, the dealer may move that reverse vending machine to another location and operate the reverse vending machine at that different location.

(d) The amount of a payment to a reverse vending machine manufacturer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology or $5,000.00, whichever is less. The reverse vending machine manufacturer must reduce the purchase price of the new reverse vending machine to the dealer by the amount of any payment to the reverse vending machine manufacturer under this subdivision.

445.637 Beverage container redemption antifraud fund; creation; payments; allocations; report.

Sec. 7. (1) The beverage container redemption antifraud fund is created in the state treasury. All of the following apply to the fund:

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

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

(c) The department is the administrator of the fund for auditing purposes.

(d) The department shall expend money from the fund, upon appropriation, only for the purposes of this act and the reverse vending machine antifraud act, including, but not limited to, administration of those acts. However, the department may not use more than $100,000.00 from the fund in any state fiscal year for administration of this act and the reverse vending machine antifraud act.

(2) At any time after it begins to receive reports described in section 13, but not later than 30 days after receiving all of the reports described in section 13, the department shall immediately begin to arrange with reverse vending machine manufacturers for the retrofitting of reverse vending machines under section 5 that are located in counties that border another state and in counties in the Lower Peninsula that are contiguous with a county of this state that borders another state. The department shall also arrange for payments from the fund on behalf of dealers eligible under section 6 for the acquisition of new reverse vending machines for use in those counties.

(3) In allocating money from the fund for purposes of subsection (2), the department shall do all of the following:

(a) Subject to subdivision (b), give priority to retrofitting reverse vending machines under section 5 located in the counties described in subsection (2), or for the acquisition of new reverse vending machines under section 6 for use in those counties, that it determines have the greatest potential benefit for reducing the redemption of nonreturnable containers.

(b) Allocate at least 50% of the money in the fund to retrofitting reverse vending machines located in counties that border another state under section 5 or for the acquisition of new reverse vending machines under section 6 for use in counties that border another state.

(4) Beginning 1 year after the effective date of this act, the department by September 1 of each year shall report to the legislature on the progress it has made in reducing the redemption of nonreturnable containers, including the total number of distributors who

were overreedemers in the immediately preceding calendar year, before trading, as well as the average amount of overredemption.

445.639 Payment amount; purchase or lease.

Sec. 9. (1) The amount of payment a reverse vending machine manufacturer may receive under section 7 for retrofitting a single reverse vending machine under section 5 is the total cost of retrofitting that reverse vending machine or $5,000.00, whichever is less.

(2) A dealer that operates a reverse vending machine at a location in a county of this state that borders another state, or in a county in the Lower Peninsula that is contiguous with a county of this state that borders another state, may elect to purchase or lease a new reverse vending machine that meets the requirements of the reverse vending machine antifraud act to replace that existing reverse vending machine rather than have that existing reverse vending machine retrofitted under section 5. All of the following apply if a dealer purchases or leases a new reverse vending machine from a reverse vending machine manufacturer under this subsection:

(a) The reverse vending machine manufacturer shall submit an application for payment in the form prescribed by the department. The reverse vending machine manufacturer shall include with the application a copy of the dealer's purchase order for the new reverse vending machine.

(b) A reverse vending machine manufacturer may not apply money received under this subsection to the purchase price of a new reverse vending machine that does not meet the requirements of the reverse vending machine antifraud act.

(c) The dealer shall operate the new reverse vending machine at the same location as the reverse vending machine it replaces. However, if the dealer ceases retail sale of beverages in beverage containers at that location, the dealer may move that reverse vending machine to another location and operate the reverse vending machine at that different location.

(d) The amount of a payment to a reverse vending machine manufacturer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology or $5,000.00, whichever is less. The reverse vending machine manufacturer must reduce the purchase price of the new reverse vending machine to the dealer by the amount of any payment to the reverse vending machine manufacturer under this subdivision.

(e) The reverse vending machine manufacturer may not apply for or receive payment under this act for retrofitting a reverse vending machine if the reverse vending machine manufacturer received money for a new reverse vending machine to replace that existing reverse vending machine under this subsection.

(f) For purposes of this act, the department shall consider the replacement of a reverse vending machine with a new reverse vending machine under this section as a retrofitting of a reverse vending machine.

445.641 Distribution of money left in fund.

Sec. 11. If the department determines that it has paid the reverse vending machine manufacturers for retrofitting all of the reverse vending machines located in the counties described in section 7(2), and for the acquisition of any new reverse vending machines under section 6 for use in those counties for which it has received applications for payment, and the total of those payments is less than the amount in the fund, the department shall distribute the money remaining in the fund to dealers for the purchase of new reverse vending machines. All of the following apply to a payment of money under this section:

(a) A dealer requesting money under this section shall submit an application for payment, in the form prescribed by the department.

(b) A dealer shall only use money received under this section to purchase a new reverse vending machine that meets the requirement of the reverse vending machine antifraud act and that the dealer will operate that reverse vending machine at a location in this state.

(c) The amount of a payment to a dealer under this section shall not exceed that part of the price of the new reverse vending machine attributable to the cost of installation of the machine's vision technology, as determined by the department.

(d) The department shall disburse money from the fund under this section in the order in which it receives applications for payment under this section.

445.643 Report.

Sec. 13. (1) No later than 60 days after the effective date of this act, each dealer that operates reverse vending machines that are located in any county of this state that borders another state, or any county in the Lower Peninsula that is contiguous with a county of this state that borders another state, shall submit a report to the department.

(2) The report described in subsection (1) shall contain all of the following information:

(a) Contact information for the dealer.

(b) The street address and county of each location in the counties described in subsection (1) where the dealer uses reverse vending machines.

(c) The number of reverse vending machines used by the dealer at each location described in subdivision (b) and the type of beverage containers each of those reverse vending machines accepts.

(d) The number of beverage containers sold and the number of beverage containers redeemed by the dealer under the beverage container law in the preceding calendar year at each of the locations described in subdivision (b).

(3) The department shall prescribe the form of the report described in subsection (1).

Conditional effective date.

Enacting section 1. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 1532.

(b) House Bill No. 5147.

This act is ordered to take immediate effect.
Approved December 25, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: Senate Bill No. 1532, referred to in enacting section 1, was filed with the Secretary of State December 29, 2008, and became 2008 PA 389, Eff. (pending) (See act).

House Bill No. 5147, also referred to in enacting section 1, was filed with the Secretary of State December 29, 2008, and became 2008 PA 387, Eff. (pending) (See act).

[No. 389]

(SB 1532)

AN ACT to amend 1976 IL 1, entitled "A petition to initiate legislation to provide for the use of returnable containers for soft drinks, soda water, carbonated natural or mineral water, other nonalcoholic carbonated drink, and for beer, ale, or other malt drink of whatever alcoholic content, and for certain other beverage containers; to provide for the use of unredeemed bottle deposits; to prescribe the powers and duties of certain state agencies

and officials; and to prescribe penalties and provide remedies," (MCL 445.571 to 445.576) by adding section 2a.

The People of the State of Michigan enact:

445.572a Designated metal, glass, or plastic containers; sale or offer of sale of certain beverages; requirements; violations; definitions.

Sec. 2a. (1) Except as provided in subsection (2), beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:

(a) Sales of that brand of beverage in 12-ounce metal beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 12-ounce metal beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 12-ounce metal beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(2) Beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:

(a) Sales of that brand of beverage in 12-ounce metal beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 12-ounce metal beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 12-ounce metal beverage containers of that brand of beverage were overredeemed in the Upper Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(3) Except as provided in subsection (4), beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:

(a) Sales of that brand of beverage in 12-ounce glass beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 12-ounce glass beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 12-ounce glass beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(4) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:

(a) Sales of that brand of beverage in 12-ounce glass beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 12-ounce glass beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 12-ounce glass beverage containers of that brand of beverage were overredeemed in the Upper Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(5) Except as provided in subsection (6), beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in this state in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:

(a) Sales of that brand of beverage in 20-ounce plastic beverage containers in this state in the preceding calendar year were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 20-ounce plastic beverage containers in this state in the preceding calendar year were fewer than 500,000 cases, and 20-ounce plastic beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(6) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of nonalcoholic beverages shall not sell, offer for sale, or give a nonalcoholic beverage to a consumer, dealer, or distributor in the Upper Peninsula in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:

(a) Sales of that brand of beverage in 20-ounce plastic beverage containers in the Upper Peninsula were at least 500,000 cases, as determined by the department of treasury.

(b) Sales of that brand of beverage in 20-ounce plastic beverage containers in the Upper Peninsula in the preceding calendar year were fewer than 500,000 cases, and 20-ounce plastic beverage containers of that brand of beverage were overredeemed in the Upper Peninsula by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(7) Beginning 90 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce metal beverage container that is not a designated metal container if either of the following is met:

(a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.

(b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(8) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 12-ounce glass beverage container that is not a designated glass container if either of the following is met:

(a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.

(b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(9) Beginning 450 days after the effective date of the amendatory act that added this section, a manufacturer of alcoholic beverages shall not sell, offer for sale, or give an alcoholic beverage to a consumer, dealer, or distributor in this state in a 20-ounce plastic beverage container that is not a designated plastic container if either of the following is met:

(a) Sales of that brand of beverage in this state in the preceding calendar year were at least 500,000 case equivalents, as determined by the department of treasury.

(b) Sales of that brand of beverage in this state in the preceding calendar year were fewer than 500,000 case equivalents, and beverage containers of that brand of beverage were overredeemed by more than 600,000 containers in the preceding calendar year, as determined by the department of treasury.

(10) A symbol, mark, or other distinguishing characteristic that is placed on a designated metal container, designated glass container, or designated plastic container by a manufacturer to allow a reverse vending machine to determine if that container is a returnable container must be unique to this state, or used only in this state and 1 or more other states that have laws substantially similar to this act.

(11) A person that violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than $2,000.00, or both. Section 4 does not apply to a violation described in this subsection.

(12) As used in this section:

(a) "Alcoholic beverage" means beer, ale, any other malt drink of whatever alcoholic content, a mixed wine drink, or a mixed spirit drink.

(b) "Brand" means any word, name, group of letters, symbol, or trademark, or any combination of them, adopted and used by a manufacturer to identify a specific flavor or type of beverage and to distinguish that flavor or type of beverage from another beverage produced or marketed by that manufacturer or another manufacturer.

(c) "Designated glass container" means a 12-ounce glass beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(d) "Designated metal container" means a 12-ounce metal beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(e) "Designated plastic container" means a 20-ounce plastic beverage container that contains a symbol, mark, or other distinguishing characteristic that allows a reverse vending machine to determine if the beverage container is or is not a returnable container.

(f) "Glass beverage container" means a beverage container composed primarily of glass.

(g) "Metal beverage container" means a beverage container composed primarily of metal.

(h) "Nonalcoholic beverage" means a soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(i) "Plastic beverage container" means a beverage container composed primarily of plastic.

(j) "Reverse vending machine" means a device designed to properly identify and process empty beverage containers and provide a means for a deposit refund on returnable containers.

Effective date; condition.

Enacting section 1. This amendatory act takes effect on the date that deposits into the beverage container redemption antifraud fund created in the beverage container redemption antifraud act from money appropriated by the legislature equal or exceed $1,000,000.00.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 1648.

(b) House Bill No. 5147.

This act is ordered to take immediate effect.
Approved December 25, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: Senate Bill No. 1648, referred to in enacting section 2, was filed with the Secretary of State December 29, 2008, and became 2008 PA 388, Imd. Eff. Dec. 29, 2008.

House Bill No. 5147, also referred to in enacting section 2, was filed with the Secretary of State December 29, 2008, and became 2008 PA 387, Eff. (pending) (See act).

[No. 390]

(HB 6602)

AN ACT to amend 1976 PA 223, entitled "An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties," by amending sections 2, 4, 5, 10, and 11 (MCL 18.352, 18.354, 18.355, 18.360, and 18.361), as amended by 1996 PA 519.

The People of the State of Michigan enact:

18.352 Crime victims compensation board; creation; renaming as crime victim services commission; duties of department; appointment, qualifications, and terms of members; vacancy; chairperson; compensation.

Sec. 2. (1) The crime victims compensation board formerly created within the department of management and budget under this section is renamed the crime victim services commission, which shall continue as the successor agency of the board in all respects and for all purposes. Office budget development, procurement, and related management functions shall be performed by the department of community health.

(2) Members of the crime victims compensation board shall continue in office as commission members for their unexpired terms. The commission shall consist of 5 members as follows, of whom not more than 3 shall belong to the same political party and who shall be appointed by the governor with the advice and consent of the senate:

(a) One member admitted to the practice of law in this state for not less than 5 years immediately preceding his or her appointment.

(b) One member who is a county prosecuting attorney.

(c) One member who is a peace officer.

(d) One member who is a member of the medical profession.

(e) One member who is a community-based victim advocate.

(3) A member's term of office shall be 3 years, except that of the 2 members appointed to satisfy the expanded membership requirement created by 1996 PA 519, 1 shall be appointed to serve an initial term of 2 years and the other shall be appointed to serve an initial term

of 3 years. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(4) The governor shall designate 1 commission member to serve as chairperson at the governor's pleasure.

(5) The commission members shall be paid on a per diem basis as determined by the legislature.

18.354 Eligibility for awards; limitations; waiver.

Sec. 4. (1) Except as provided in subsection (2), the following persons are eligible for awards:

(a) A victim or an intervenor of a crime.

(b) A surviving spouse, parent, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

(c) A surviving person related to the victim by blood or affinity, a guardian, personal representative, or member of the same household as the victim.

(d) A health care provider seeking payment under section 5a.

(2) A person is not eligible to receive an award if the person is either of the following:

(a) Criminally responsible for the crime.

(b) An accomplice to the crime.

(3) An award shall not be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of $200.00 or has lost at least 2 continuous weeks' earnings or support, but the commission may waive the limitations of this subsection in the case of a claimant retired by reason of age or disability. If the claimant is a victim of criminal sexual conduct in the first, second, or third degree, the commission may waive the limitations of this subsection. The commission shall waive this limitation for health care providers seeking payment under section 5a.

18.355 Claim; filing; notice; pending criminal prosecution; emergency award or certain payment to health care provider not prohibited.

Sec. 5. (1) A claim may be filed by the person eligible to receive an award or, if a person is a minor, by his or her parent or guardian.

(2) Except as provided in subsection (3), a claim shall be filed by the claimant not later than 1 year after the occurrence of the crime upon which the claim is based, except as follows:

(a) If police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed by a person listed in section 4(1)(a), (b), or (c) not later than 1 year after the crime was reported.

(b) A claim may be filed within 1 year after the discovery by a law enforcement agency that injuries previously determined to be accidental, of unknown origin, or resulting from natural causes, were incurred as the result of a crime.

(3) Upon petition by the claimant and for good cause shown, the commission may extend the period in which a claim may be filed under subsection (2).

(4) A claim shall be filed in the commission's office in person or by mail. The commission shall accept for filing a claim that is submitted by a person who is eligible and which alleges

the jurisdictional requirements set forth in this act and meets the requirements as to form as approved by the commission.

(5) Upon filing of a claim by a person listed in section 4(1)(a), (b), or (c), the commission shall promptly notify the prosecuting attorney of the county in which the crime is alleged to have occurred. If, within 20 days after the notification, the prosecuting attorney advises the commission that a criminal prosecution is pending upon the same alleged crime and requests that action by the commission be deferred, the commission shall defer the proceedings until the criminal prosecution is concluded. When the criminal prosecution is concluded, the prosecuting attorney shall promptly notify the commission. This section does not prohibit the commission from granting emergency awards pursuant to section 9 or from paying a health care provider under section 5a.

18.360 Verification of facts as condition to award.

Sec. 10. An award shall not be made unless the investigation of the claim verifies the following facts:

(a) A crime was committed.

(b) The crime directly resulted in personal physical injury to, or death of, the victim.

(c) Police records show that the crime was reported promptly to the proper authorities. An award shall not be made if the police records show that the report was made more than 48 hours after the occurrence of the crime unless any of the following circumstances apply:

(*i*) The crime was criminal sexual conduct committed against a victim who was less than 18 years of age at the time of the occurrence and the crime was reported before the victim attained 19 years of age.

(*ii*) The commission, for good cause shown, finds the delay was justified.

(*iii*) The commission is making a payment under section 5a.

(d) That the crime did not occur while the victim was confined in a federal, state, or local correctional facility.

18.361 Amount of award; reduction or denial of award.

Sec. 11. (1) Except for a claim under section 5a, an award made under this act shall be an amount not more than an out-of-pocket loss, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from the injury. The aggregate award under this act shall not exceed $15,000.00 per claimant.

(2) Unless reduced under this act, an award made for loss of earnings or support shall be in an amount equal to the actual loss sustained. An award shall not exceed $200.00 for each week of lost earnings or support.

(3) An award made for funeral expenses, including burial expenses and grief counseling, shall be not less than $200.00 or more than $2,000.00 for each victim. The award may include not more than $500.00 to reimburse expenses for grief counseling for the victim's spouse, child, parent, or sibling.

(4) An award for psychological counseling shall not exceed 26 hourly sessions per victim or intervenor. The award may include not more than 8 family sessions that include any of the victim's or intervenor's spouse, children, parents, or siblings who are not criminally responsible for or an accomplice to the crime. The maximum hourly reimbursement rate shall not exceed $80.00 per hourly session for a therapist or counselor licensed or registered to practice in this state, except that the maximum hourly reimbursement rate shall not exceed $95.00 per hourly session for a psychologist or physician licensed to practice in this state.

(5) An award shall be reduced by the amount of 1 or more of the following payments received or to be received as a result of the injury:

(a) From or on behalf of the person who committed the crime.

(b) From insurance, but not including disability or death benefits paid or to be paid to a peace officer or a corrections officer on account of injuries sustained in the course of employment.

(c) From public funds, but not including disability or death benefits paid or to be paid to a peace officer or a corrections officer on account of injuries sustained in the course of employment.

(d) From an emergency award under section 9.

(6) In making a determination on a claim filed by a person listed in section 4(1)(a), (b), or (c), the commission shall determine whether the victim's misconduct contributed to his or her injury and shall reduce the amount of the award or reject the claim altogether, in accordance with the determination. The commission may disregard for this purpose the victim's responsibility for his or her own injury if the record shows that the injury was attributable to the victim's efforts to prevent a crime or an attempted crime from occurring in his or her presence or to apprehend a person who had committed a crime in his or her presence. As used in this subsection, "misconduct" includes but is not limited to provocation of or participation in a crime contemporaneous with or immediately preceding the injury.

(7) Except for a claim under section 5a, if the commission finds that the claimant will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury if he or she is not granted financial assistance, the commission shall deny the award. In determining the serious financial hardship, the commission shall consider all of the financial resources of the claimant.

(8) If the commission determines that the payment of an award will cause substantial unjust enrichment and economic benefit to a person criminally responsible for the crime, the commission shall deny the payment.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1629 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved December 25, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: Senate Bill No. 1629, referred to in enacting section 1, was filed with the Secretary of State December 29, 2008, and became 2008 PA 391, Imd. Eff. Dec. 29, 2008.

[No. 391]

(SB 1629)

AN ACT to amend 1976 PA 223, entitled "An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties," (MCL 18.351 to 18.368) by adding section 5a.

The People of the State of Michigan enact:

18.355a Sexual assault medical forensic examination; payment to health care provider; conditions; definitions.

Sec. 5a. (1) A health care provider is eligible to be paid for a sexual assault medical forensic examination under this section only if that examination includes all of the following:

(a) The collection of a medical history.

(b) A general medical examination, including, but not limited to, the use of laboratory services and the dispensing of prescribed pharmaceutical items.

(c) One or more of the following:

(*i*) A detailed oral examination.

(*ii*) A detailed anal examination.

(*iii*) A detailed genital examination.

(d) Administration of a sexual assault evidence kit under section 21527 of the public health code, 1978 PA 368, MCL 333.21527, and related medical procedures and laboratory and pharmacological services.

(2) A health care provider shall not submit a bill for any portion of the costs of a sexual assault medical forensic examination to the victim of the sexual assault, including any insurance deductible or co-pay, denial of claim by an insurer, or any other out-of-pocket expense.

(3) A health care provider seeking payment under this section for a sexual assault medical forensic examination shall do all of the following:

(a) Advise the victim, orally and in writing, that a claim shall not be submitted to his or her insurance carrier without his or her express written consent, and that he or she may decline to consent if he or she believes that submitting a claim to the insurance carrier would substantially interfere with his or her personal privacy or safety.

(b) If the victim gives his or her consent as provided under subdivision (a), submit a claim for the cost of a sexual assault medical forensic examination to the victim's insurance carrier, including, but not limited to, medicaid and medicare.

(4) A health care provider may seek payment from 1 or both of the following if reimbursement cannot be obtained from the victim's insurance or insurance is unavailable:

(a) The commission under this section.

(b) From another entity other than the victim.

(5) A health care provider that is reimbursed for a sexual assault medical forensic examination by a victim's insurance carrier shall not submit to the commission any portion of the claim reimbursable by the insurance carrier.

(6) A health care provider that is reimbursed for a sexual assault medical forensic examination by another entity shall not submit to the commission any portion of the claim reimbursable by the other entity.

(7) The commission shall pay a health care provider not more than $600.00 for the cost of performing a sexual assault medical forensic examination, including, but not limited to, the cost of 1 or more of the following:

(a) Not more than $400.00 for the use of an emergency room, clinic, or examination room, and the sexual assault medical forensic examination and related procedures other than services and items described in subdivisions (b) and (c).

(b) Not more than $125.00 for laboratory services.

(c) Not more than $75.00 for dispensing pharmaceutical items related to the sexual assault.

(8) A claim for compensation under subsection (7) shall be submitted to the commission in a form and in the manner prescribed by the commission.

(9) Except with the victim's consent or as otherwise provided in this subsection, information collected by the commission under this section that identifies a victim of sexual assault is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, shall not be obtained by subpoena or in discovery, and is inadmissible as evidence in any civil, criminal, or administrative proceeding. Information collected by the commission under this section that identifies a victim of sexual assault is confidential and shall only be used for the purposes expressly provided in this act, including, but not limited to, investigating and prosecuting a civil or criminal action for fraud related to reimbursement provided by the commission under this section.

(10) A victim of sexual assault shall not be required to participate in the criminal justice system or cooperate with law enforcement as a condition of being administered a sexual assault medical forensic examination. For payments authorized under this section, the victim's request for a sexual assault medical forensic examination satisfies the requirements for prompt law enforcement reporting and victim cooperation under sections 6 and 10.

(11) As used in this section:

(a) "Health care provider" means any of the following:

(*i*) A health professional licensed or registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(*ii*) A health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(*iii*) A local health department as that term is defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(b) "Sexual assault" means a criminal violation of sections 520a to 520*l* of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520*l*.

(c) "Sexual assault medical forensic examination" means that term as described in subsection (1)(a) to (d).

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 6602 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: House Bill No. 6602, referred to in enacting section 1, was filed with the Secretary of State December 29, 2008, and became 2008 PA 390, Imd. Eff. Dec. 29, 2008.

[No. 392]

(HB 6714)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into

the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 324.101 to 324.90106) by adding sections 17315, 17321, and 17333.

The People of the State of Michigan enact:

324.17315 Recycling of covered electronic devices; manner; rules.

Sec. 17315. (1) Covered electronic devices collected under this part shall be recycled in a manner that complies with federal and state laws, including rules promulgated by the department, and local ordinances.

(2) Any rules promulgated by the department under section 17321 regulating the recycling of covered electronic devices collected under this part shall be consistent with both of the following:

(a) The United States environmental protection agency's "Plug-in to eCycling Guidelines for Materials Management", as in effect on the effective date of the amendatory act that added this section.

(b) The institute of scrap recycling industries, inc. publication "Electronics Recycling Operating Practices", dated April 25, 2006.

324.17321 Rules for purposes of MCL 324.17303 and 324.17315.

Sec. 17321. After April 1, 2012, the department, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may promulgate rules for the purposes of sections 17303 and 17315.

324.17333 Report.

Sec. 17333. If federal law establishes a national program for the collection and recycling of computer equipment, the department shall, within 90 days, submit a report to the standing committees of the senate and house of representatives with primary responsibility for recycling and solid waste issues. The report shall describe the federal program, discuss whether provisions of this part have been preempted, and recommend whether this part should be amended or repealed.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 897.

(b) Senate Bill No. 898.

(c) House Bill No. 6715.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 897 was filed with the Secretary of State December 29, 2008, and became 2008 PA 394, Imd. Eff. Dec. 29, 2008.
Senate Bill No. 898 was filed with the Secretary of State December 29, 2008, and became 2008 PA 395, Imd. Eff. Dec. 29, 2008.
House Bill No. 6715 was filed with the Secretary of State December 29, 2008, and became 2008 PA 393, Imd. Eff. Dec. 29, 2008.

[No. 393]

(HB 6715)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 324.101 to 324.90106) by adding sections 17325 and 17329.

The People of the State of Michigan enact:

324.17325 Recycler of covered electronic devices; inspection of operations.

Sec. 17325. (1) The department shall administer and enforce this part to the extent that funds are appropriated for that purpose.

(2) The department may inspect the operations of a recycler of covered electronic devices to assess compliance with requirements of this part.

324.17329 Violation; penalty; suspension or revocation of registration; deposit of fine in electronic waste recycling fund.

Sec. 17329. (1) A person who violates this part may be ordered to pay a civil fine of not more than $500.00 for the first violation or not more than $2,500.00 for a second or subsequent violation.

(2) A person who knowingly violates this part or who knowingly submits false information to the department under this part is guilty of a misdemeanor punishable by a fine of not more than $5,000.00. Each day on which a violation described in this subsection occurs represents a separate violation.

(3) After a contested case hearing, the department may suspend or revoke the registration of a recycler that violates this part a third or subsequent time. The department shall provide notice of the suspension or revocation on its website.

(4) A civil fine collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 897.

(b) Senate Bill No. 898.

(c) House Bill No. 6714.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 897 was filed with the Secretary of State December 29, 2008, and became 2008 PA 394, Imd. Eff. Dec. 29, 2008.
Senate Bill No. 898 was filed with the Secretary of State December 29, 2008, and became 2008 PA 395, Imd. Eff. Dec. 29, 2008.
House Bill No. 6714 was filed with the Secretary of State December 29, 2008, and became 2008 PA 392, Imd. Eff. Dec. 29, 2008.

[No. 394]

(SB 897)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 11514 (MCL 324.11514), as amended by 2007 PA 212, and by adding part 173.

The People of the State of Michigan enact:

324.11514 Promotion of recycling and reuse of materials; electronics recycling; materials prohibited from disposal in landfill; disposal of yard clippings; report.

Sec. 11514. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, will conserve raw materials, conserve landfill space, and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(*i*) Household waste other than septage waste.

(*ii*) Leachate or gas condensate that is approved for recirculation.

(*iii*) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

PART 173 ELECTRONICS

324.17301 Definitions.

Sec. 17301. As used in this part:

(a) "Collector" means a person who receives covered electronic devices from consumers and arranges for the delivery of the covered electronic devices to a recycler.

(b) "Computer" means a desktop personal computer or laptop computer, a computer monitor, or beginning April 1, 2011, a printer. Computer does not include any of the following:

(*i*) A personal digital assistant device or mobile telephone.

(*ii*) A computer peripheral device, including a mouse or other similar pointing device, or a detachable or wireless keyboard.

(c) "Computer takeback program" means a program required under section 17305(c).

(d) "Consumer" means a person who used a covered electronic device primarily for personal or small business purposes in this state.

(e) "Covered computer" means a computer that was or will be used primarily for personal or small business purposes in this state. Covered computer does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(f) "Covered electronic device" means a covered computer or covered video display device.

(g) "Covered video display device" means a video display device that was or will be used primarily for personal or small business purposes in this state. Covered video display

device does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for transportation or use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(h) "Department" means the department of environmental quality.

(i) "Electronic device takeback program" or "takeback program" means a computer takeback program or a video display device takeback program.

(j) "Manufacturer", subject to subdivision (k), means any of the following:

(*i*) The person who owns the brand with which a covered computer is labeled.

(*ii*) The person who owns or is licensed to use the brand with which a covered video display device is labeled.

(*iii*) If the brand owner does not do business in the United States, the person on whose account a covered electronic device was imported into the United States.

(*iv*) A person who contractually assumes the responsibilities and obligations of a person described under subparagraph (*i*), (*ii*), or (*iii*).

(k) Manufacturer does not include a person unless the person manufactured, sold, or imported more than 50 covered computers in 2000 or any subsequent calendar year or more than 50 covered video display devices in the previous calendar year.

(*l*) "Printer" means a printer or a multifunction or "all-in-one" device that in addition to printing performs 1 or more other operations such as copying, scanning, or faxing, that is designed to be placed on a desk or other work surface, and that may use any of various print technologies, such as laser and LED (electrographic), ink jet, dot matrix, thermal, or digital sublimation. Printer does not include a floor-standing printer, a printer with an optional floor stand, a point of sale (POS) receipt printer, a household printer such as a calculator with printing capabilities or a label maker, or a non-stand-alone printer that is embedded into a product other than a covered computer.

(m) "Recycler" means a person who as a principal component of business operations acquires covered electronic devices and sorts and processes the covered electronic devices to facilitate recycling or resource recovery techniques. Recycler does not include a collector, hauler, or electronics shop.

(n) "Retailer" means a person that sells a covered electronic device to a consumer by any means, including transactions conducted through sales outlets, catalogs, mail order, or the internet, whether or not the person has a physical presence in this state.

(o) "Small business" means a business with 10 or fewer employees.

(p) "Video display device" means an electronic device with a viewable screen of 4 inches or larger that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite. Video display device includes, but is not limited to, a direct view or projection television whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology.

(q) "Video display device takeback program" means a program required under section 17305(d).

324.17303 Sale or offer of sale of new covered electronic device; registration by manufacturer; expiration; contents; effectiveness; failure to comply with requirements or rules; notice of deficiency; denial or revocation of registration; hearing; duration of validity; fee; deposit of revenues; list of registered manufacturers; maintenance of website; report.

Sec. 17303. (1) By 30 days after the end of each state fiscal year, a manufacturer that sells or offers for sale to any person in this state a new covered electronic device shall register with the department on a form provided by the department. The registration expires 30 days after the end of the following state fiscal year. After October 30, 2009, a manufacturer who has not already filed a registration under this part shall submit a registration within 10 business days after the manufacturer begins to sell or offer for sale new covered electronic devices in this state.

(2) A registration under subsection (1) shall include all of the following:

(a) The manufacturer's name, address, and telephone number.

(b) Each brand name under which the manufacturer sells or offers for sale covered electronic devices in this state.

(c) Information about the manufacturer's electronic device takeback program, including all of the following:

(*i*) Information provided to consumers on how and where to return covered electronic devices labeled with the manufacturer's name or brand label.

(*ii*) The means by which information described in subparagraph (*i*) is disseminated to consumers, including the relevant website address if the internet is used.

(*iii*) Beginning with the first registration submitted after the implementation of the takeback program, a report on the implementation of the takeback program during the prior state fiscal year, including all of the following:

(A) The total weight of the covered electronic devices received by the takeback program from consumers during the prior year.

(B) The processes and methods used to recycle or reuse the covered electronic devices received from consumers.

(C) The identity of any collector or recycler with whom the manufacturer contracts for the collection or recycling of covered electronic devices received from consumers. The identity of a recycler shall include the addresses of that recycler's recycling facilities in this state, if any. The identity of a collector or recycler reported under this subparagraph is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(3) A registration is effective upon receipt by the department if the registration is administratively complete.

(4) If a manufacturer's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the manufacturer of the deficiency. If the manufacturer fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the manufacturer's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A registration is valid until October 30 of each year. A manufacturer of covered electronic devices shall update its registration within 10 business days after a change in the brands of covered electronic devices from that manufacturer sold or offered for sale in this state.

(6) Until October 1, 2015, a manufacturer's registration shall be accompanied by an annual fee of $3,000.00. However, if the amount of money in the fund on December 31 of any year is greater than $600,000.00, the department shall not collect manufacturers' registration fees for the following state fiscal year.

(7) Revenue from manufacturers' registration fees collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

(8) The department shall maintain on its website a list of registered manufacturers of computers and a list of registered manufacturers of video display devices and the website addresses at which they provide information on recycling covered electronic devices.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

324.17305 Sale or offer of sale of new covered electronic device; manufacturer; requirements.

Sec. 17305. Beginning April 1, 2010, a manufacturer shall not sell or offer for sale to any person in this state a new covered electronic device, whether through sales outlets, catalogs, mail order, the internet, or any other means, unless all of the following requirements are met:

(a) The covered electronic device is labeled with the manufacturer's name or brand label, owned by or, in the case of a video display device, licensed for use by the manufacturer.

(b) The manufacturer's name appears on the applicable registration list maintained by the department under section 17303.

(c) If the covered electronic device is a covered computer, the manufacturer has a computer takeback program as described in section 17309.

(d) If the covered electronic device is a covered video display device, the manufacturer has a video display device takeback program as described in section 17311.

324.17307 Sale or offer of sale of new covered electronic device; retailer; appearance of manufacturer on registration list.

Sec. 17307. A retailer shall not sell or offer for sale to any person in this state a new covered electronic device from a manufacturer, purchased by the retailer on or after April 1, 2010 unless the manufacturer appears on the applicable registration list under section 17303.

324.17309 Computer takeback program.

Sec. 17309. (1) Beginning April 1, 2010, each manufacturer of covered computers shall implement a computer takeback program that meets all of the following criteria:

(a) The manufacturer of a covered computer that has reached the end of its useful life for the consumer or the manufacturer's designee accepts from the consumer the covered computer. This part shall not be construed to impair the obligation of a contract under which a person agrees to conduct a computer takeback program on behalf of a manufacturer.

(b) A consumer is not required to pay a separate fee when the consumer returns the covered computer to the manufacturer of that covered computer or the manufacturer's designee.

(c) The collection of covered computers is reasonably convenient and available to and otherwise designed to meet the needs of consumers in this state. Examples of collection methods that alone or combined meet the convenience requirements of this subdivision

include systems for a consumer to return a covered computer by 1 or more of the following means:

(*i*) Mail or common carrier shipper.

(*ii*) Deposit at a local physical collection site that is kept open and staffed on a continuing basis.

(*iii*) Deposit during periodic local collection events.

(*iv*) Deposit with a retailer.

(d) The manufacturer of a covered computer provides a consumer information on how and where to return the covered computer, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered computers when the covered computers are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered computers collected under subdivision (a).

(2) A manufacturer's computer takeback program is not required to accept more than 7 covered computers from a single consumer on a single day.

(3) A manufacturer may conduct a computer takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered computers by another person to fulfill the manufacturer's obligations under this section.

324.17311 Video display device takeback program.

Sec. 17311. (1) Beginning April 1, 2010, each manufacturer of covered video display devices shall implement a video display device takeback program that meets all of the following criteria:

(a) A manufacturer or the manufacturer's designee accepts from a consumer any covered video display device that has reached the end of its useful life for the consumer, regardless of the type or brand of covered video display device.

(b) A consumer is not required to pay a separate fee when the consumer returns a covered video display device through the takeback program of any manufacturer of any covered video display device.

(c) The requirements of section 17309(1)(c), as applied to covered video display devices.

(d) The manufacturer provides a consumer information on how and where to return a covered video display device, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered video display devices when the covered video display devices are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered video display device collected under subdivision (a). As a nonbinding target, each manufacturer required to conduct a video display device takeback program should annually recycle 60% of the total weight of covered video display devices sold by the manufacturer in this state during the prior state fiscal year. Sales data under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(2) A manufacturer's video display device takeback program is not required to accept more than 7 covered video display devices from a single consumer on a single day.

(3) A manufacturer may conduct a video display device takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered video display devices by another person to fulfill the manufacturer's obligations under this section.

324.17313 Electronic waste advisory council; creation; members; appointments; term; vacancy; removal; co-chairs; meeting; quorum; business conducted at public meeting; writings; compensation prohibited; report; dissolution.

Sec. 17313. (1) The electronic waste advisory council is created within the legislative branch of state government. The council shall consist of the following members:

(a) Four individuals appointed by the senate majority leader as follows:

(*i*) One individual representing covered video display device manufacturers.

(*ii*) One individual representing recyclers of covered computers or covered video display devices.

(*iii*) One individual representing a trade association of computer manufacturers and video display device manufacturers.

(*iv*) One individual who is a member of the senate.

(b) Four individuals appointed by the speaker of the house of representatives as follows:

(*i*) One individual representing covered computer manufacturers.

(*ii*) One individual representing retailers of covered computers or covered video display devices.

(*iii*) One individual representing an agency responsible for a countywide recycling program.

(*iv*) One individual who is a member of the house of representatives.

(c) Two individuals appointed by the governor as follows:

(*i*) One individual representing a statewide conservation organization.

(*ii*) One individual representing the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) A member of the council shall serve for the life of the council. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing official may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(4) The council member who is a member of the senate and the council member who is a member of the house of representatives shall serve as co-chairs of the council. The first meeting of the council shall be called by the co-chairs. At the first meeting, the council shall elect from among its members any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of a co-chair or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261

to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, the member of the council representing the department shall serve without additional compensation.

(8) By April 1, 2012, the council shall submit a report to the governor, the department, and the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment. The report shall evaluate the program under this part and make recommendations to improve the recycling of covered electronic devices. The report shall evaluate all of the following in light of the policies and objectives set forth in section 11514:

(a) Whether a manufacturer's market share should be used to determine the amount of video display devices required to be recycled annually by the manufacturer.

(b) Whether a manufacturer with a takeback program that recycles electronic waste at a higher rate than provided for in this part should be granted credits and, if so, the life of the credits, whether the credits would be transferable, and how the credit system should otherwise operate.

(c) Whether the nonbinding target for manufacturers recycling covered video display devices under section 17311 should be increased or decreased and whether the target should be made mandatory.

(d) What items should be included in a mandatory takeback program and, if new items are recommended, what the recycling rates should be for those new items.

(e) Whether and how a manufacturer should be sanctioned for failing to meet the requirements of this part.

(f) Whether funding for the administration of this part is appropriate or needs to be increased or decreased.

(g) Whether a program should be developed to recognize manufacturers that implement an expanded recycling program for additional products such as printers or recycles electronic waste at a higher rate than provided for in this part.

(h) Whether a system should be developed to collect covered electronic devices that are otherwise not collected by a manufacturer.

(i) Whether additional recycling data, such as the amount of covered electronic devices collected by collectors, should be collected and, if so, how.

(j) Whether a program should be developed and funding should be obtained for grants to expand recycling and recovery programs for covered electronic devices and to provide consumer education related to the programs.

(k) Whether a disposal ban for covered electronic devices is appropriate.

(9) The council is dissolved effective July 1, 2012.

324.17327 Electronic waste recycling fund; creation; deposit of money or assets; investment; money at close of fiscal year; administrator of fund; expenditures.

Sec. 17327. (1) The electronic waste recycling fund is created within the state treasury.

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

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

(4) The department of environmental quality shall be the administrator of the fund for auditing purposes.

(5) Money from the fund shall be expended, upon appropriation, for the administrative expenses of the department in implementing this part.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 898.

(b) House Bill No. 6714.

(c) House Bill No. 6715.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 898 was filed with the Secretary of State December 29, 2008, and became 2008 PA 395, Imd. Eff. Dec. 29, 2008.
House Bill No. 6714 was filed with the Secretary of State December 29, 2008, and became 2008 PA 392, Imd. Eff. Dec. 29, 2008.
House Bill No. 6715 was filed with the Secretary of State December 29, 2008, and became 2008 PA 393, Imd. Eff. Dec. 29, 2008.

[No. 395]

(SB 898)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 324.101 to 324.90106) by adding sections 17317, 17319, 17323, and 17331.

The People of the State of Michigan enact:

324.17317 Recycling of covered electronic devices; registration form; contents; report of total weight recycled previous year; effectiveness of registration; failure to meet requirements; fee; deposit of revenues; submission of false registration as violation; report.

Sec. 17317. (1) By 30 days after the end of each state fiscal year, a person who engages in the business of recycling covered electronic devices shall register with the department on a form provided by the department. The registration expires 30 days after the end of the following state fiscal year. After October 30, 2009, a recycler who has not already filed a registration under this part shall submit a registration within 10 business days after the recycler begins to recycle covered electronic devices.

(2) A registration under subsection (1) shall include all of the following:

(a) The name, address, telephone number, and location of all recycling facilities under the direct control of the recycler located in this state that may receive covered electronic devices.

(b) A certification by the recycler that the recycler substantially meets the requirements of section 17315.

(3) Beginning October 30, 2010, a recycler of covered electronic devices shall report the total weight of covered electronic devices recycled during the previous year. The recycler shall keep a written log that records the weight of covered video display devices and the total weight of covered computers delivered to the recycler and identified as such on receipt. The total weight reported in the registration shall be based on this log.

(4) A recycler's registration is effective upon receipt by the department if the registration is administratively complete.

(5) If a recycler's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the recycler of the deficiency. If the recycler fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the recycler's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) Until October 1, 2015, a recycler's registration under subsection (1) shall be accompanied by an annual fee of $2,000.00.

(7) Revenue from recyclers' registration fees collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

(8) Submitting a false registration under subsection (1) is a violation of this part.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

324.17319 Requirements.

Sec. 17319. A recycler shall comply with all of the following:

(a) Employ industry-accepted procedures substantially equivalent to those specified by the United States department of defense for the destruction or sanitization of data on hard drives and other data storage devices.

(b) Maintain a documented environmental, health, and safety management system that may be audited and is compliant with or equivalent to ISO 14001.

(c) Maintain records identifying all persons to whom the recycler provided electronic devices or materials derived from electronic devices for the purpose of conducting additional recycling and the weight and volume of material provided to each of those persons.

(d) Not use state or federal prison labor to process covered electronic devices or transact with a third party that uses or subcontracts for the use of prison labor.

324.17323 Management of covered electronic devices not considered disposal.

Sec. 17323. Management of covered electronic devices consistent with this part is not considered disposal for purposes of section 11538(6).

324.17331 Loss or use of data; liability.

Sec. 17331. (1) Except to the extent otherwise provided by contract, a manufacturer, retailer, collector, or, subject to subsection (2), recycler is not liable for the loss or use of data or other information from an information storage device of a covered electronic device collected or recycled under this part.

(2) The exemption from liability for the use of data or other information under subsection (1) applies to a recycler only if the recycler complies with section 17319(a).

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) Senate Bill No. 897.

(b) House Bill No. 6714.

(c) House Bill No. 6715.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 897 was filed with the Secretary of State December 29, 2008, and became 2008 PA 394, Imd. Eff. Dec. 29, 2008.
House Bill No. 6714 was filed with the Secretary of State December 29, 2008, and became 2008 PA 392, Imd. Eff. Dec. 29, 2008.
House Bill No. 6715 was filed with the Secretary of State December 29, 2008, and became 2008 PA 393, Imd. Eff. Dec. 29, 2008.

[No. 396]

(HB 5355)

AN ACT to amend 1989 PA 196, entitled "An act to abolish the criminal assessments commission; to prescribe certain duties of the crime victim services commission; to create the crime victim's rights fund; to provide for expenditures from the fund; to provide for assessments against criminal defendants and certain juvenile offenders; to provide for payment of crime victim's rights services; and to prescribe the powers and duties of certain state and local agencies and departments," by amending sections 1, 4, and 8 (MCL 780.901, 780.904, and 780.908), sections 1 and 4 as amended by 1996 PA 520 and section 8 as amended by 1993 PA 345.

The People of the State of Michigan enact:

780.901 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the crime victim services commission described in section 2 of 1976 PA 223, MCL 18.352.

(b) "Crime victim's rights services" means services required to implement fully the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, and services prescribed under this act.

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

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

(e) "Fund" means the crime victim's rights fund created under section 4.

(f) "Juvenile offense" means an offense committed by a juvenile under the jurisdiction of the juvenile division of the probate court or the family division of circuit court under section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor if the juvenile's case is not designated as a case in which the juvenile is to be tried in the same manner as an adult.

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

(h) "Specified misdemeanor" means a misdemeanor violation of any of the following:

(*i*) Section 602a, 625(1) or (3), 626, or 904 of the Michigan vehicle code, 1949 PA 300, MCL 257.602a, 257.625, 257.626, and 257.904.

(*ii*) Section 82127(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127.

(*iii*) Section 81134(1) or (2) or 81135 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.81135.

(*iv*) Section 80176(1) or (3) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176.

(*v*) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185.

(*vi*) Part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461.

(*vii*) Section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(*viii*) Section 353 or 355 of the railroad code of 1993, 1993 PA 354, MCL 462.353 and 462.355.

(*ix*) Section 174, 218, 356, 356d, 359, 362, 362a, 377a, 380, 479a, 535, or 540e of the Michigan penal code, 1931 PA 328, MCL 750.174, 750.218, 750.356, 750.356d, 750.359, 750.362, 750.362a, 750.377a, 750.380, 750.479a, 750.535, and 750.540e.

(*x*) A local ordinance substantially corresponding to a law listed in subparagraphs (*i*) to (*ix*).

780.904 Crime victim's rights fund.

Sec. 4. (1) The crime victim's rights fund is created as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts received under this act and as provided by law. The state treasurer shall invest fund money in the same manner as surplus funds are invested under section 3 of 1855 PA 105, MCL 21.143. Earnings from the fund shall be credited to the fund.

(2) The fund shall be expended only as provided in this act. Amounts in the fund in excess of the necessary revenue determined by the commission under section 3(a) may be used for crime victim compensation under 1976 PA 223, MCL 18.351 to 18.368. Before October 1, 2009, any additional excess revenue that has not been used for crime victim compensation may be used to provide any of the following services:

(a) The operation and enhancement of the sex offender registry compiled and maintained under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(b) The Amber alert program under the Michigan Amber alert act, 2002 PA 712, MCL 28.751 to 28.754.

(c) Treatment services for victims of conduct prohibited under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g.

(d) Polygraph examination as that term is defined under section 2 of the polygraph protection act of 1981, 1982 PA 44, MCL 37.202.

(e) The expert witness testimony of a forensic scientist.

780.908 Using distribution to maintain or enhance crime victim's rights services.

Sec. 8. A court, department, or local agency that receives a distribution under this act shall use that distribution to maintain or enhance crime victim's rights services.

This act is ordered to take immediate effect.
Approved December 26, 2008.
Filed with Secretary of State December 29, 2008.

[No. 397]

(HB 6612)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 2505 (MCL 324.2505), as added by 1995 PA 60; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

324.2505 Environmental education fund; creation; disposition of assets; appropriation of civil fines to fund; money to remain in fund; administrator of fund for auditing purposes; establishment and operation of clearinghouse of environmental education materials.

Sec. 2505. (1) The environmental education fund is created within the state treasury.

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

(3) Twenty-five percent of the civil fines collected annually under the following parts or their predecessor acts, but not more than $250,000.00 in any fiscal year, shall be appropriated to the fund:

(a) Part 31.

(b) Part 111.

(c) Part 115.

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

(5) The department shall be the administrator of the fund for auditing purposes.

(6) Money in the fund shall be used to implement this part and may be used for the establishment and operation of a clearinghouse of environmental education materials, which would make environmental education materials available to educators throughout the state.

Repeal of MCL 324.2504.

Enacting section 1. Section 2504 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2504, is repealed.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

[No. 398]

(HB 6150)

AN ACT to create the Michigan supply chain management development commission; to prescribe the powers and duties of the commission; and to provide for certain regulations.

The People of the State of Michigan enact:

125.1891 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan supply chain management development commission act".

125.1892 Definitions.

Sec. 2. As used in this act:

(a) "Commission" means the Michigan supply chain management development commission created under section 3.

(b) "Supply chain management" means an integrated approach to planning, implementing, and controlling the flow of information, materials, and services from raw materials to the distribution of the finished product to the end customer. Supply chain management includes the process of collaborating horizontally among suppliers, retailers, and customers to create value. Supply chain management also includes manufacturing, technology, distribution, warehousing, marketing, logistics, all modes of transportation, and focuses on eliminating points of friction at borders, the adoption of efficiencies, and improving global collaboration.

125.1893 Michigan supply chain management development commission; creation; purpose; membership; compensation.

Sec. 3. (1) The Michigan supply chain management development commission is created within the department of treasury.

(2) The commission shall create a road map for attracting, supporting, marketing, and growing the international trade, supply chain, and logistics industries by advising on the development and coordination of state transportation and economic development policies. Based upon an inventory of industry needs and state strengths and an economic multiplier impact analysis, the commission shall study and design programs to provide incentives and otherwise support these growth industries through workforce development, tax incentives, recruitment, marketing, and other activities.

(3) The commission shall be made up of the following members:

(a) The president of the Michigan strategic fund.

(b) The director of the state transportation department.

(c) The director of the department of environmental quality.

(d) The state treasurer.

(e) Two individuals who are residents of this state and who live within 1 mile of an international border crossing, airport, rail yard, intermodal facility, port, or other major transportation infrastructure that has significant impacts on the local residential community, appointed by the governor from a list of 4 or more individuals selected by the senate majority leader.

(f) Two individuals who are residents of this state and who live within 1 mile of an international border crossing, airport, rail yard, intermodal facility, port, or other major transportation infrastructure that has significant impacts on the local residential community, appointed by the governor from a list of 4 or more individuals selected by the speaker of the house of representatives.

(g) Seven individuals appointed by the governor who have education in, experience with, or knowledge of supply chain management and logistics, including, but not limited to, individuals representing commerce, transportation, border operators, warehousing, local economic development agencies, and institutions of higher learning.

(4) A member of the commission shall not receive compensation for services as a member of the commission, but the commission may reimburse each member of the commission for expenses necessarily incurred in the performance of his or her duties.

125.1894 Commission; powers and duties; funds.

Sec. 4. (1) The commission shall have and exercise all of the following powers and duties:

(a) Advise the governor and appropriate state agencies on methods, proposals, programs, and initiatives involving supply chain management in this state that may stimulate state economies and provide additional employment opportunities for this state.

(b) Create avenues of communication between this state and Ontario and the federal government of Canada concerning economic development, trade and commerce, transportation, and industrial affairs concerning supply chain management.

(c) Survey and audit how other states have used supply chain management capabilities to attract industry.

(d) Determine which industries in this state would benefit from supply chain coordination.

(e) Make recommendations to the governor and the legislature on all the following:

(*i*) Changes to the tax structure of this state to make Michigan competitive with other jurisdictions.

(*ii*) Mechanisms to attract long-term capital investment.

(*iii*) How to improve access to credit or financing resources.

(*iv*) How to improve workforce training and retraining support to maximize productivity.

(*v*) Expediting regulatory oversight to facilitate expansion and new investment.

(*vi*) Reducing regulatory burden.

(*vii*) Developing growth strategy for targeted industries.

(*viii*) How to prioritize and coordinate investment in transportation infrastructure of this state.

(f) Develop integrated state strategy regarding policy to global supply chain operations.

(2) State funds shall not be used to fund the operations of the commission. The commission may be funded with private funds, federal funds, or other funds that are not state funds.

This act is ordered to take immediate effect.
Approved January 5, 2009.
Filed with Secretary of State January 6, 2009.

[No. 399]

(SB 1489)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 82105, 82106, and 82126 (MCL 324.82105, 324.82106, and 324.82126), section 82105 as amended by 2008 PA 145, section 82106 as amended by 2004 PA 587, and section 82126 as amended by 2008 PA 27.

The People of the State of Michigan enact:

324.82105 Application for registration; forms; signature; fee; recording application; issuance of certificate of registration and decal; contents, legibility, and inspection of certificate; surety bond; issuance, duration, and renewal of certificate and registration decal; display of decal; destroying record of certificate.

Sec. 82105. (1) Before operating a snowmobile requiring registration in this state, the owner shall apply for registration with the department of state on forms provided by the department of state. If the snowmobile was purchased from a retail dealer in this state, application for initial registration shall be made with the dealer at the point of sale. The dealer shall issue a temporary registration permit in a form received from and approved by the department of state that is valid for 15 days after the date of sale. Each retail dealer shall submit applications for registrations and fees to the department of state not less than once each week. The application shall include the new owner's signature and, beginning July 1, 2009, the new owner's name and bona fide residence address and the names and addresses of holders of any security interest in the snowmobile and its accessories in the order of priority. The application shall be accompanied by a fee of $22.00 if paid before July 1, 2009 or $30.00 if paid on or after July 1, 2009. Upon receipt of the application in approved form, the department of state shall enter the application upon its records and issue to the applicant a certificate of registration and decal. The certificate of registration shall contain the number awarded to the snowmobile, the name and address of the owner, other information the department of state considers necessary, and, beginning July 1, 2009, the name and address of the holders of secured interests. A person shall not operate a snowmobile that is required to be registered in this state unless the person possesses the certificate of registration in legible form. The person shall make the certificate of registration available for inspection upon demand by a peace officer.

(2) If the secretary of state is not satisfied as to the ownership of a snowmobile that is worth more than $2,500.00, before registering the snowmobile and issuing a certificate of registration, the secretary of state may require the applicant to file a properly executed surety bond in a form prescribed by the secretary of state and executed by the applicant and a company authorized to conduct a surety business in this state. The bond shall be in an amount equal to twice the value of the snowmobile as determined by the secretary of state and shall be conditioned to indemnify or reimburse the secretary of state, any prior owner, and any subsequent purchaser of the snowmobile and their successors in interest against any expense, loss, or damage, including reasonable attorney fees, incurred as a result of the issuance of a certificate of registration for the snowmobile or any defect in the right, title, or interest of the applicant in the snowmobile. An interested person has a right of action to recover on the bond for a breach of the conditions of the bond, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of 3 years, or before 3 years if the snowmobile is no longer registered in this state and the current valid certificate of registration is surrendered to the secretary of state, unless the secretary of state has received notification of the pendency of an action to recover on the bond. If the secretary of state is not satisfied as to the ownership of a snowmobile that is worth $2,500.00 or less, the secretary of state shall require the applicant to certify that the applicant is the owner of the snowmobile and entitled to register the snowmobile.

(3) The certificate of registration and registration decal authorizes the operation of the snowmobile for a 3-year period that begins on October 1 and expires on September 30 of the third year. The certificate of registration and registration decal may be renewed beginning July 1 of the expiration year by payment of a fee of $22.00 before July 1, 2009 or $30.00 on or after July 1, 2009. The registration decal shall be displayed as prescribed by rule promulgated by the department of state.

(4) The department of state may destroy a record of a certificate of registration 7 years after expiration of the certificate.

324.82106 Disposition of revenue; designation of state recreational trail coordinator; plan for statewide recreational and snowmobile trails system; expenditures; construction of recreational trail facilities or major improvements on private land; interconnecting network of statewide snowmobile trails and use areas; alternative nonconflicting off-season recreational trail uses.

Sec. 82106. (1) Except as otherwise provided in this part, revenue received from the registration fees under this part shall be deposited as follows:

(a) Seventeen dollars of each registration fee shall be deposited into the snowmobile registration fee subaccount. However, if the balance of the snowmobile registration fee subaccount exceeds $1,600,000.00 at any time, the state treasurer shall transfer all amounts in excess of $1,600,000.00 to the recreational snowmobile trail improvement subaccount. From the revenue deposited in the snowmobile registration fee subaccount under this part, the legislature shall make an annual appropriation as follows:

(*i*) Not more than $3.00 from each registration fee collected during each fiscal year shall be appropriated to the department of state for administration of the registration provisions of this part. At the close of each state fiscal year, any money appropriated under this subparagraph but not expended shall be credited to the recreational snowmobile trail improvement subaccount. Additionally, if less than $3.00 from each registration fee is appropriated to the department of state, the state treasurer shall transfer the difference between $3.00 and the amount appropriated from each registration fee to the recreational snowmobile trail improvement subaccount.

(*ii*) From each fee for a registration paid before July 1, 2009, $14.00 or from each fee for a registration paid on or after July 1, 2009, $19.00 shall be appropriated to the department for purposes set forth in section 82107, including financial assistance to county sheriff departments and local law enforcement agencies for local snowmobile programs. Any money appropriated but not expended under this subparagraph shall be credited each year to the snowmobile registration fee subaccount.

(b) From each fee for a registration paid before July 1, 2009, $5.00 shall be deposited in the recreational snowmobile trail improvement subaccount and shall be administered by the department for the purposes of planning, construction, maintenance, and acquisition of trails and areas for the use of snowmobiles, or access to those trails and areas, and basic snowmobile facilities.

(c) From each fee for a registration paid on or after July 1, 2009, $8.00 shall be deposited into the permanent snowmobile trail easement subaccount under section 82110a. This money is intended to supplement other money expended for snowmobile-related activities of the department and not as a replacement for those expenditures.

(2) The department shall designate a state recreational trail coordinator and shall maintain a comprehensive plan for implementing a statewide recreational and snowmobile trails system. The comprehensive plan shall be reviewed and updated each year by the department.

(3) The money appropriated under this section to the department for snowmobile trails and areas, for access to those trails or areas, and for basic snowmobile facilities may be expended for the acquisition, development, and maintenance on any land in the state. This money may be used to purchase lands or secure easements, leases, permits, or other appropriate agreements permitting use of private property for snowmobile trails, basic facilities, and areas which may be used by bicyclists, hikers, equestrians, and other nonconflicting off-season recreational trail users, if the easements, leases, permits, or other agreements provide public access to the trail, use areas, and support facilities.

(4) Recreational trail facilities or major improvements shall not be constructed on private land unless a written agreement in the form of an easement, lease, or permit for a public trail right-of-way having a term of not less than 5 years is made between the owner of the land and the department.

(5) The money appropriated under this section shall be expended in a manner and as part of the overall plan of the department for an interconnecting network of statewide snowmobile trails and use areas giving consideration to expected snowfall and availability for use with adequate snow cover. Consideration shall be given in the plan for alternative nonconflicting off-season recreational uses of snowmobile trails.

324.82126 Operation of snowmobile; prohibitions; exemption; construction, operation, and maintenance of snowmobile trail; conditions; demarcation of trail by signing; "operate" defined; prohibited conduct; assumption of risk; violation of subsection (2) as civil infraction; fine.

Sec. 82126. (1) A person shall not operate a snowmobile under any of the following circumstances:

(a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.

(b) In a forest nursery, planting area, or on public lands posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged or posted or reasonably identifiable as a natural dedicated area that is in zone 2 or zone 3.

(c) On the frozen surface of public waters as follows:

(*i*) Within 100 feet of a person, including a skater, who is not in or upon a snowmobile.

(*ii*) Within 100 feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the snowmobile.

(*iii*) On an area that has been cleared of snow for skating purposes unless the area is necessary for access to the public water.

(d) Within 100 feet of a dwelling between 12 midnight and 6 a.m., at a speed greater than the minimum required to maintain forward movement of the snowmobile.

(e) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except under 1 or more of the following circumstances:

(*i*) During an emergency.

(*ii*) For law enforcement purposes.

(*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(*iv*) For the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(*v*) On the person's own property or property under the person's control or as an invited guest.

(f) While transporting on the snowmobile a bow, unless unstrung or encased, or a firearm, unless unloaded in both barrel and magazine and securely encased.

(g) On or across a cemetery or burial ground.

(h) Within 100 feet of a slide, ski, or skating area except when traveling on a county road right-of-way pursuant to section 82119 or a snowmobile trail that is designated and funded by the department. A snowmobile may enter such an area for the purpose of servicing the area or for medical emergencies.

(i) On a railroad or railroad right-of-way. This prohibition does not apply to railroad personnel, public utility personnel, law enforcement personnel while in the performance of their duties, or persons using a snowmobile trail located on or along a railroad right-of-way, or an at-grade snowmobile trail crossing of a railroad right-of-way, that has been expressly approved in writing by the owner of the right-of-way and each railroad company using the tracks and that meets the conditions imposed in subsections (4) and (5). A snowmobile trail or an at-grade snowmobile trail crossing shall not be constructed on a right-of-way designated by the federal government as a high-speed rail corridor.

(2) Except as provided under subsection (3), a person shall not operate a snowmobile unless the snowmobile is equipped with a muffler in good working order and in constant operation from which noise emission does not exceed either of the following:

(a) For a snowmobile manufactured after July 1, 1977 and sold or offered for sale in this state, 78 decibels at 50 feet, as measured using the 2003 society of automotive engineers standard J192.

(b) For a stationary snowmobile manufactured after July 1, 1980 and sold or offered for sale in this state, 88 decibels, as measured using the 2004 society of automotive engineers standard J2567.

(3) A person is exempt from the requirement of subsection (2) under either of the following circumstances:

(a) While operating a snowmobile during an organized race on a course that is used solely for racing.

(b) While operating a snowmobile on private property, with the permission of the private property owner, in preparation for an organized race, if the operation of the snowmobile is in compliance with applicable local noise ordinances.

(4) A snowmobile trail located on or along a railroad right-of-way shall be constructed, operated, and maintained by a person other than the person owning the railroad right-of-way and the person operating the railroad, except that an at-grade snowmobile trail crossing of a railroad right-of-way shall be constructed and maintained by the person operating the railroad at the sole cost and expense of the person operating the trail connected by the crossing, pursuant to terms of a lease agreement under which the person operating the trail agrees to do all of the following:

(a) Indemnify the person owning the railroad right-of-way and the person operating the railroad against any claims associated with, arising from, or incidental to the construction, maintenance, operation, and use of the trail or at-grade snowmobile trail crossing.

(b) Provide liability insurance in the amount of $2,000,000.00 naming the person owning the railroad right-of-way and the person operating the railroad as named insureds.

(c) Meet any other obligations or provisions considered appropriate by the person owning the railroad right-of-way or the person operating the railroad including, but not limited to, the payment of rent that the person owning the railroad right-of-way or the person operating the railroad is authorized to charge under this part and the meeting of all construction, operating, and maintenance conditions imposed by the person owning the railroad right-of-way and the person operating the railroad regarding the snowmobile trail.

(5) A snowmobile trail shall be clearly demarcated by signing constructed and maintained at the sole cost and expense of the grant program sponsor. The signing shall be placed at the outer edge of the railroad right-of-way, as far from the edge of the railroad tracks as possible, and not closer than 20 feet from the edge of the railroad tracks unless topography or other natural or manmade features require the trail to lie within 20 feet of the edge of the railroad tracks. The at-grade snowmobile trail crossing of a railroad right-of-way shall be aligned at 90 degrees or as close to 90 degrees as possible to the railroad track being crossed, and shall be located where approach grades to the crossing are minimal and where the vision of a person operating a snowmobile will be unobstructed as he or she approaches the railroad tracks. The design of the snowmobile trail, including the location of signing, shall be included upon plan sheets by the person constructing, operating, and maintaining the trail, and shall be approved in writing by the person owning the right-of-way and the person operating the railroad. Signing shall conform to specifications issued by the department to its snowmobile trail grant program sponsors.

(6) Notwithstanding section 82101, as used in this section, “operate” means to cause to function, run, or manage.

(7) A person shall not alter, deface, damage, or remove a snowmobile trail sign or control device.

(8) Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with signs, fences, or other snowmobiles or snow-grooming equipment. Those risks do not include injuries to persons or property that can result from the use of a snowmobile by another person in a careless or negligent manner likely to endanger person or property. When a snowmobile is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of snowmobiling additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment and facilities.

(9) A person who violates subsection (2) is responsible for a state civil infraction and shall be ordered to pay a civil fine of not less than $100.00 or more than $250.00.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1490 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved January 5, 2009.
Filed with Secretary of State January 6, 2009.

Compiler's note: Senate Bill No. 1490, referred to in enacting section 1, was filed with the Secretary of State January 6, 2009, and became 2008 PA 400, Imd. Eff. Jan. 6, 2009.

[No. 400]

(SB 1490)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 82118 (MCL 324.82118), as amended by 2004 PA 587, and by adding section 82110a.

The People of the State of Michigan enact:

324.82110a Permanent snowmobile trail easement subaccount.

Sec. 82110a. (1) The permanent snowmobile trail easement subaccount is created as a subaccount of the snowmobile account.

(2) The state treasurer may receive money or other assets from any source for deposit into the permanent snowmobile trail easement subaccount. The state treasurer shall direct the investment of the subaccount. The state treasurer shall credit to the subaccount interest and earnings from subaccount investments. Money in the subaccount at the close of the fiscal year shall remain in the subaccount and shall not lapse to the snowmobile account or the general fund. The department shall be the administrator of the subaccount for auditing purposes.

(3) The department shall expend money from the permanent snowmobile trail easement subaccount, upon appropriation, only to purchase lands, or secure easements or other appropriate agreements allowing use of private property, for permanent snowmobile trails that are open to the public in this state or to make grants for those purposes. To be eligible for a grant, an entity shall be a local unit of government or be organized for educational and charitable purposes within the meaning of 26 USC 501(c)(3) that includes promoting and facilitating the expansion and improvement of the existing snowmobile trail system in this state with permanent snowmobile trails.

(4) If a recipient of a grant under subsection (3) ceases to exist, any interest allowing the use of private property to establish permanent snowmobile trails that was obtained by that

grant recipient with grant money under subsection (3) shall vest in this state, subject to the terms of the instrument creating the interest, including, but not limited to, terms concerning the scope of the easement.

(5) The department of attorney general shall review grants and other instruments proposed to be utilized for the purposes of subsections (3) and (4).

(6) The department in consultation with the snowmobile advisory committee shall promulgate rules for the administration of the permanent snowmobile trail easement subaccount.

(7) Any proceeds from the sale of lands purchased under subsection (3) or the termination of easements or other agreements secured under subsection (3) shall be deposited into the permanent snowmobile trail easement subaccount.

(8) If, at any time after July 1, 2010, the Michigan snowmobile advisory committee, by the affirmative vote of at least 5 members, determines that the public snowmobile trail system in this state is fully developed and not capable of expansion by adding further permanent snowmobile trail easements, the advisory committee shall report its determination to the department. The department shall, within 60 days, submit to the senate and house appropriations committees and standing committees with primary responsibility for outdoor recreation issues a report setting forth the department's recommendations concerning dissolution of the permanent snowmobile trail easement subaccount, the disposition of revenue in that subaccount, and other relevant issues under this part.

324.82118 Michigan snowmobile trail permit.

Sec. 82118. (1) In addition to registration of a snowmobile pursuant to section 82105 or registration in another state or province, except as otherwise provided in this section, a person who desires to operate a snowmobile in this state shall purchase a Michigan snowmobile trail permit sticker. The Michigan snowmobile trail permit issued under this section shall be valid for a period of 1 year which begins on October 1 and ends on the following September 30. The fee for the permit shall be as follows:

(a) For permits valid for the 1-year period beginning October 1, 2009 or October 1, 2010, $35.00.

(b) For permits valid for the 1-year period beginning October 1, 2011, 2012, 2013, 2014, or 2015, $45.00.

(c) For permits valid for the 1-year period beginning October 1, 2016 and every fifth year thereafter, the state treasurer shall adjust the current permit fee by an amount determined by the state treasurer to reflect the cumulative percentage change in the consumer price index during the most recent 5-year period for which consumer price index statistics are available, rounded to the nearest dollar. A fee adjusted by the state treasurer under this subdivision shall remain in effect for 5 years. As used in this subdivision, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

(2) Revenue from the trail permit fee shall be allocated as follows:

(a) 50 cents shall be retained by the department for administrative costs.

(b) $1.00 shall be retained by the agent selling the permit.

(c) The balance shall be deposited in the recreational snowmobile trail improvement subaccount.

(3) The department shall make the sale of trail permits available on its website. For each trail permit sold through the website, the amount otherwise credited to an agent under subsection (2) shall instead be credited to the recreational snowmobile trail improvement subaccount.

(4) The trail permit sticker shall be permanently affixed to the snowmobile directly above or below the headlight of the snowmobile.

(5) The department may contract with a person to act as an agent for the purpose of issuing Michigan snowmobile trail permits. The department shall sell the permits to agents in bulk. An agent may obtain a refund from the department for any permits that are not sold.

(6) An agent who uses or allows the use of a permit by anyone except the snowmobile user to whom the permit is sold is guilty of a misdemeanor, punishable by a fine of $50.00 for each instance of such use or allowed use.

(7) The department of state may suspend a certificate of registration if the department of state determines that the required fee has not been paid and remains unpaid after reasonable notice or demand. In addition to the required fee, a $10.00 penalty shall be assessed and collected against any person who tenders an insufficient check or draft in payment of the fee.

(8) A snowmobile used solely for transportation on the frozen surface of public waters for the purpose of ice fishing is exempt from the requirement of purchasing and displaying a snowmobile trail permit sticker under this section.

(9) A person shall not charge a fee for a snowmobile trail permit in an amount that is greater than the fee printed on the face of the permit.

(10) To obtain a snowmobile trail permit, an applicant shall provide all information required on the permit application.

(11) A person who fails to secure a permit under this section or who violates subsection (4) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

(12) The department shall, by June 1 of each year, report to the members of the appropriate standing committees and appropriations subcommittees of the house and senate, a detailed expenditure plan pertaining to the additional funds generated by this act. The plan shall include information as to how funds were expended in the prior year.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1489 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved January 5, 2009.
Filed with Secretary of State January 6, 2009.

Compiler's note: Senate Bill No. 1489, referred to in enacting section 1, was filed with the Secretary of State January 6, 2009, and became 2008 PA 399, Imd. Eff. Jan. 6, 2009.

[No. 401]

(HB 4594)

AN ACT to amend 1972 PA 382, entitled "An act to license and regulate the conducting of bingo, millionaire parties, and certain other forms of gambling; to provide for the conducting of charity games, raffles, and numeral games; to provide for exemptions from licensing requirements under certain circumstances; to impose certain duties and authority upon certain state departments, agencies, and officers; to provide a tax exemption; and to provide penalties," by amending sections 2, 3, and 9 (MCL 432.102, 432.103, and 432.109), sections 2 and 9 as amended by 1999 PA 108 and section 3 as amended by 2006 PA 427.

The People of the State of Michigan enact:

432.102 Definitions; A to C.

Sec. 2. As used in this act:

(a) “Active service” and “active state service” mean those terms as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

(b) “Advertising” means all printed matter, handouts, flyers, radio, television, advertising signs, billboards, and other media used to promote an event licensed under this act.

(c) “Bingo” means a game of chance commonly known as bingo in which prizes are awarded on the basis of designated numbers or symbols conforming to numbers or symbols selected at random.

(d) “Bureau” means the bureau of state lottery as created by section 5 of the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.5.

(e) “Charity game” means the random resale of a series of charity game tickets.

(f) “Charity game ticket” means a ticket commonly referred to as a break-open ticket or pull-tab that is approved and acquired by the bureau and is distributed and sold by the bureau or a licensed supplier to a qualified organization, a portion of which is removed to discover whether the ticket is a winning ticket and whether the purchaser may be awarded a prize.

(g) “Commissioner” means the commissioner of state lottery appointed under section 7 of the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.7.

(h) “Coverall pattern” means a pattern required to win a bingo game in which all numbers on a bingo card are required to be called.

432.103 Definitions; E to V.

Sec. 3. As used in this act:

(a) “Educational organization” means an organization within this state that is organized not for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction in any public or private elementary or secondary school that complies with the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, or any private or public college or university that is organized not for pecuniary profit and that is approved by the state board of education.

(b) “Fraternal organization” means an organization within this state, except a college fraternity or sorority, that is organized not for pecuniary profit; that is a branch, lodge, or chapter of a national or state organization; and that exists for the common purpose, brotherhood, or other interests of its members.

(c) “Licensee” means a person or qualified organization licensed under this act.

(d) “Member” means an individual who qualified for membership in a qualified organization under its bylaws, articles of incorporation, charter, rules, or other written statement.

(e) “Michigan national guard” and “military” mean those terms as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

(f) “Person” means a natural person, firm, association, corporation, or other legal entity.

(g) “Qualified organization” means, subject to subdivision (h), either of the following:

(*i*) A bona fide religious, educational, service, senior citizens, fraternal, or veterans’ organization that operates without profit to its members and that either has been in existence continuously as an organization for a period of 5 years or is exempt from taxation under 26 USC 501(c).

(*ii*) Only for the purpose of conducting a small raffle or a large raffle under this act, a component of the military or the Michigan national guard whose members are in active service or active state service.

(h) “Qualified organization” does not include a candidate committee, political committee, political party committee, ballot question committee, independent committee, or any other committee as defined by, and organized under, the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

(i) “Religious organization” means any of the following:

(*i*) An organization, church, body of communicants, or group that is organized not for pecuniary profit and that gathers in common membership for mutual support and edification in piety, worship, and religious observances.

(*ii*) A society of individuals that is organized not for pecuniary profit and that unites for religious purposes at a definite place.

(*iii*) A church related private school that is organized not for pecuniary profit.

(j) “Senior citizens organization” means an organization within this state that is organized not for pecuniary profit, that consists of at least 15 members who are 60 years of age or older, and that exists for their mutual support and for the advancement of the causes of elderly or retired persons.

(k) “Service organization” means either of the following:

(*i*) A branch, lodge, or chapter of a national or state organization that is organized not for pecuniary profit and that is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a fraternal, civic, or service purpose within the state.

(*ii*) A local civic organization that is organized not for pecuniary profit; that is not affiliated with a state or national organization; that is recognized by resolution adopted by the local governmental subdivision in which the organization conducts its principal activities; whose constitution, charter, articles of incorporation, or bylaws contain a provision for the perpetuation of the organization as a nonprofit organization; whose entire assets are used for charitable purposes; and whose constitution, charter, articles of incorporation, or bylaws contain a provision that all assets, real property, and personal property shall revert to the benefit of the local governmental subdivision that granted the resolution upon dissolution of the organization.

(*l*) “Veterans’ organization” means an organization within this state, or a branch, lodge, or chapter within this state of a state organization or of a national organization chartered by the congress of the United States, that is organized not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or armed forces of the United States.

432.109 Use of net proceeds of event; expenses.

Sec. 9. (1) Except as provided in subsection (2), the entire net proceeds of an event shall be devoted exclusively to the lawful purposes of the licensee. A licensee shall not incur or pay an item of expense in connection with the holding, operating, or conducting of an event except the following expenses in reasonable amounts:

(a) The purchase or rental of equipment necessary for conducting an event and payment of services reasonably necessary for the repair of equipment.

(b) Cash prizes or the purchase of prizes of merchandise.

(c) Rental of the location at which the event is conducted.

(d) Janitorial services.

(e) The fee required for issuance or reissuance of a license to conduct the event.

(f) Other reasonable expenses incurred by the licensee, not inconsistent with this act, as permitted by rule of the commissioner.

(2) A qualified organization described in section 3(g)(*ii*) shall use the entire net proceeds of an event, after paying items of expense incurred in reasonable amounts in connection with the holding, operating, or conducting of the event and listed in subsection (1), only for the expense of training or purchasing goods or services for the support of the activities of the component.

This act is ordered to take immediate effect.
Approved January 5, 2009.
Filed with Secretary of State January 6, 2009.

[No. 402]

(HB 5356)

AN ACT to amend 1972 PA 284, entitled "An act to provide for the organization and regulation of corporations; to prescribe their duties, rights, powers, immunities and liabilities; to provide for the authorization of foreign corporations within this state; to prescribe the functions of the administrator of this act; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," by amending sections 131, 201, 211, 217, 241, 545a, 564a, 564b, 762, 1002, and 1060 (MCL 450.1131, 450.1201, 450.1211, 450.1217, 450.1241, 450.1545a, 450.1564a, 450.1564b, 450.1762, 450.2002, and 450.2060), section 131 as amended by 2005 PA 217, sections 211 and 241 as amended and section 545a as added by 1989 PA 121, sections 217, 564a, and 762 as amended by 1997 PA 118, section 564b as amended by 2001 PA 57, and section 1060 as amended by 2007 PA 83, and by adding sections 745, 746, and 806; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

450.1131 Submission of document; delivery; filing; return of copy; public inspection; maintaining records or files; copies of documents and destroying originals; facsimile or electronic transmission as original; effective date of document; fees.

Sec. 131. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document submitted under this subsection by electronic mail or over the Internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the Internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), other than an annual report, or, at his or her discretion, the original, to the person who submitted it for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to domestic and foreign corporations shall be open to reasonable inspection by the public. The administrator may maintain records or files either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of any documents filed under this act or any predecessor act by photostatic, micrographic, photographic, optical disc media, or other reproduced form and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) Except as provided in section 806, a document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document.

(7) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, $1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, $500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, $100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete on the same day as the day of the request, $200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, $50.00.

(f) For the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, $100.00.

450.1201 Incorporators.

Sec. 201. One or more persons may be the incorporators of a corporation by signing and filing articles of incorporation for the corporation.

450.1211 Corporate name; required words and abbreviations.

Sec. 211. The corporate name of a domestic corporation shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

450.1217 Transacting business under assumed name; certificate.

Sec. 217. (1) A domestic or foreign corporation may transact business under any assumed name or names other than its corporate name, if not precluded from use by section 212, by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted. The certificate is effective, unless sooner terminated by filing a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing similar certificates not earlier than 90 days before the expiration of the initial or a subsequent 5-year period. The administrator shall notify the corporation of the impending expiration of the certificate of assumed name not later than 90 days before the expiration of the initial or a subsequent 5-year period. A certificate of assumed name filed under this section does not create substantive rights to the use of a particular assumed name.

(2) The same name may be assumed by 2 or more corporations, or by 1 or more corporations and 1 or more limited partnerships or other enterprises participating together in a partnership or joint venture. Each participant corporation shall file a certificate under this section.

(3) A corporation participating in a merger, or any other entity participating in a merger under section 736, may transfer to the surviving entity the use of an assumed name for which a certificate of assumed name is on file with the administrator before the merger, if the transfer is noted in the certificate of merger as provided in section 707(1)(g), 712(1)(c), or 736(7)(f), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the merger, and the surviving entity may terminate or extend the certificate of assumed name in accordance with subsection (1).

(4) A corporation surviving a merger may use as an assumed name the corporate name of a merging corporation, or the name of any other entity participating in the merger under section 736, by filing a certificate of assumed name under subsection (1) or by providing for the use of the name as an assumed name in the certificate of merger. The surviving corporation also may file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use as an assumed name of an assumed name of a merging entity not transferred under subsection (3). A provision in a certificate of merger under this subsection shall be treated as a new certificate of assumed name.

(5) A business organization into which a corporation has converted under section 745 may use an assumed name of the converting corporation, if the corporation has a certificate of assumed name for that assumed name on file with the administrator before the conversion, by providing for the use of the name as an assumed name in the certificate of conversion. The use of an assumed name under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the conversion, and the surviving business organization may terminate or extend the certificate of assumed name in the manner described in subsection (1).

(6) A corporation into which 1 or more business organizations have converted under section 746 may use as an assumed name the name of any business organization converting into that corporation, or use as an assumed name an assumed name of that business organization,

by filing a certificate of assumed name under subsection (1) or by providing for the use of that name or assumed name as an assumed name of the corporation in the certificate of conversion. A provision in the certificate of conversion under this subsection shall be treated as a new certificate of assumed name.

450.1241 Registered office and resident agent required.

Sec. 241. Each domestic corporation and each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office which may be the same as its place of business.

(b) A resident agent. A resident agent may be either an individual resident in this state whose business office or residence is identical with the registered office; a domestic corporation or a limited liability company; or a foreign corporation or limited liability company authorized to transact business in this state that has a business office identical with the registered office.

450.1545a Interest of director or officer in transaction; compensation of directors.

Sec. 545a. (1) A transaction in which a director or officer is determined to have an interest shall not, because of the interest, be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

(a) The transaction was fair to the corporation at the time entered into.

(b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board, a committee of the board, or the independent director or directors, and the board, committee, or independent director or directors authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the committee who had no interest in the transaction, though less than a quorum, or all independent directors who had no interest in the transaction. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of the action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes cast by the holders of shares who did not have an interest in the transaction. A majority of the shares held by shareholders who did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a director or officer is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a director or officer does not have an interest.

(5) The board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders is required if the articles of incorporation, bylaws, or another provision of this act requires

that approval. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time established.

450.1564a Indemnification under MCL 450.1561, MCL 450.1562, or MCL 450.1563; determination and evaluation; designation of committee or selection of independent legal counsel; partial indemnification; payment authorization; indemnification for expenses and liabilities.

Sec. 564a. (1) Except as otherwise provided in subsection (5), an indemnification under section 561 or 562, unless ordered by the court or required under section 563, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 561 and 562 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If a quorum cannot be obtained under subdivision (a), by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) In a written opinion by independent legal counsel selected in 1 of the following ways:

(*i*) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(*ii*) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(2) In the designation of a committee under subsection (1)(b) or in the selection of independent legal counsel under subsection (1)(c)(*ii*), all directors may participate.

(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

(4) An authorization of payment of indemnification under this section shall be made in any of the following ways:

(a) By the board in 1 of the following ways:

(*i*) If there are 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all directors who are not parties or threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(*ii*) By a majority of the members of a committee of 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(*iii*) If the corporation has 1 or more independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all independent directors who are not parties or are threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(*iv*) If there are no independent directors and less than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board in accordance with section 523, in which authorization all directors may participate.

(b) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted on the authorization.

(5) To the extent that the articles of incorporation include a provision eliminating or limiting the liability of a director pursuant to section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but no indemnification may be made except to the extent authorized in section 564c if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit, or proceeding by or in the right of the corporation, as described in section 561, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred, and for judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred.

450.1564b Payment or reimbursement of party in advance of final disposition of proceeding; undertaking as unlimited general obligation; evaluation of reasonableness; advancement of expenses.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the person but may be unsecured and may be accepted without reference to the financial ability of the person to make repayment.

(3) An evaluation of reasonableness under this section shall be made in the manner specified in section 564a(1) for an evaluation of reasonableness of expenses, and an authorization shall be made in the manner specified in section 564a(4) unless an advance is mandatory. Authorization of advances with respect to a proceeding and a determination of reasonableness of advances or selection of a method for determining reasonableness may be made in a single action or resolution covering an entire proceeding. However, unless the action or resolution provides otherwise, the authorizing or determining authority may subsequently terminate or amend the authorization or determination with respect to advances not yet made.

(4) A provision in the articles of incorporation or bylaws, a resolution of the board or shareholders, or an agreement making indemnification mandatory shall also make the advancement of expenses mandatory unless the provision, resolution, or agreement specifically provides otherwise.

450.1745 Conversion of domestic corporation into business organization; requirements; "business organization" and "entity" defined.

Sec. 745. (1) A domestic corporation may convert into a business organization if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that will govern the internal affairs of the business organization after conversion and the surviving business organization complies with that law in converting.

(b) Unless subdivision (d) applies, the board of the domestic corporation proposing to convert adopts a plan of conversion that includes all of the following:

(*i*) The name of the domestic corporation, the name of the business organization into which the domestic corporation is converting, the type of business organization into which the domestic corporation is converting, identification of the statute that will govern the internal affairs of the surviving business organization, the street address of the surviving business organization, the street address of the domestic corporation if different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(*ii*) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the conversion, the manner in which the change may occur.

(*iii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the shares into ownership interests or obligations of the surviving business organization, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iv*) The terms and conditions of the organizational documents that are to govern the surviving business organization.

(*v*) Any other provisions with respect to the proposed conversion that the board considers necessary or desirable.

(c) If the board adopts the plan of conversion under subdivision (b), the plan of conversion is submitted for approval in the same manner required for a merger under section 703a(2), including the procedures pertaining to dissenters' rights if any shareholder has the right to dissent under section 762.

(d) If the domestic corporation has not commenced business, has not issued any shares, and has not elected a board, subdivisions (b) and (c) do not apply and the incorporators may approve of the conversion of the corporation into a business organization by unanimous consent. To effect the conversion, the majority of the incorporators must execute and file a certificate of conversion under subdivision (e).

(e) After the plan of conversion is approved under subdivisions (b) and (c) or the conversion is approved under subdivision (d), the domestic corporation files any formation documents required to be filed under the laws governing the internal affairs of the surviving business organization, in the manner prescribed by those laws, and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(*i*) Unless subdivision (d) applies, all of the information described in subdivision (b)(*i*) and (*ii*) and the manner and basis of converting the shares of the domestic corporation contained in the plan of conversion.

(*ii*) Unless subdivision (d) applies, a statement that the board has adopted the plan of conversion by the board under subdivision (c), or if subdivision (d) applies to the conversion,

a statement that the domestic corporation has not commenced business, has not issued any shares, and has not elected a board and that the plan of conversion was approved by the unanimous consent of the incorporators.

(*iii*) A statement that the surviving business organization will furnish a copy of the plan of conversion, on request and without cost, to any shareholder of the domestic corporation.

(*iv*) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders under subdivision (c).

(*v*) A statement specifying each assumed name of the domestic corporation to be used by the surviving business organization and authorized under section 217(5).

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The domestic corporation converts into the surviving business organization, and the articles of incorporation of the domestic corporation are canceled. Except as otherwise provided in this section, the surviving business organization is organized under and subject to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.

(b) The surviving business organization has all of the liabilities of the domestic corporation. The conversion of the domestic corporation into a business organization under this section shall not be considered to affect any obligations or liabilities of the domestic corporation incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic corporation with respect to matters arising before the conversion.

(c) The title to all real estate and other property and rights owned by the domestic corporation remain vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic corporation, as well as the debts, liabilities, and duties of the domestic corporation, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving business organization to which the domestic corporation has converted for any purpose of the laws of this state.

(d) The surviving business organization may use the name and the assumed names of the domestic corporation if the filings required under section 217(5) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the domestic corporation may be continued as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic corporation.

(f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic corporation was originally incorporated.

(g) The shares of the domestic corporation that were to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the domestic corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the domestic corporation.

(4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction

of business in this state if it transacts business in this state. The surviving business organization is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of the domestic corporation, and in a proceeding for the enforcement of a right of a dissenting shareholder of the domestic corporation against the surviving business organization.

(5) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736(1).

450.1746 Conversion of business organization into domestic corporation; requirements.

Sec. 746. (1) A business organization may convert into a domestic corporation if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that governs the internal affairs of the business organization and the business organization complies with that law in converting.

(b) The business organization proposing to convert into a domestic corporation adopts a plan of conversion that includes all of the following:

(*i*) The name of the business organization, the type of business organization that is converting, identification of the statute that governs the internal affairs of the business organization, the name of the surviving domestic corporation into which the business organization is converting, the street address of the surviving domestic corporation, and the principal place of business of the surviving domestic corporation.

(*ii*) A description of all of the ownership interests in the business organization, specifying the interests entitled to vote, any rights those interests have to vote collectively or as a class, and if the ownership interests are subject to change before the effective date of the conversion, the manner in which the change may occur.

(*iii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business organization into shares or obligations of the surviving domestic corporation, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iv*) The terms and conditions of the articles and bylaws that are to govern the surviving domestic corporation.

(*v*) Any other provisions with respect to the proposed conversion that the business organization considers necessary or desirable.

(c) If a plan of conversion is adopted by the business organization under subdivision (b), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that business organization.

(d) After the plan of conversion is approved under subdivisions (b) and (c), the business organization files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(*i*) All of the information described in subdivision (b)(*i*) and (*ii*) and the manner and basis of converting the ownership interests of the business organization contained in the plan of conversion.

(*ii*) A statement that the business organization has adopted the plan of conversion under subdivision (c).

(*iii*) A statement that the surviving business corporation will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business organization.

(*iv*) A statement specifying each assumed name of the business organization to be used by the surviving domestic corporation and authorized under section 217(6).

(*v*) Articles of incorporation for the surviving domestic corporation that meet all of the requirements of this act applicable to articles of incorporation.

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The business organization converts into the surviving domestic corporation. Except as otherwise provided in this section, the surviving domestic corporation is organized under and subject to this act.

(b) The surviving domestic corporation has all of the liabilities of the business organization. The conversion of the business organization into a domestic corporation under this section shall not be considered to affect any obligations or liabilities of the business organization incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the business organization with respect to matters arising before the conversion.

(c) The title to all real estate and other property and rights owned by the business organization remain vested in the surviving domestic corporation without reversion or impairment. The rights, privileges, powers, and interests in property of the business organization, as well as the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic corporation to which the business organization has converted for any purpose of the laws of this state.

(d) The surviving domestic corporation may use the name and the assumed names of the business organization if the filings required under section 217(6) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the business organization may be continued as if the conversion had not occurred, or the surviving domestic corporation may be substituted in the proceeding for the business organization.

(f) The surviving domestic corporation is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business organization was originally organized.

(g) The ownership interests of the business organization that were to be converted into shares or obligations of the surviving domestic corporation or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the business organization is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business organization.

450.1762 Right of shareholder to dissent and obtain payment for shares.

Sec. 762. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger under section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger, or the corporation is a subsidiary that is merged with its parent under section 711.

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order.

(d) Consummation of a plan of conversion to which the corporation is a party as the corporation that is being converted, if the shareholder is entitled to vote on the plan. However, any rights provided under this section are not available if that corporation is converted into a foreign corporation and the shareholder receives shares that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the conversion.

(e) An amendment of the articles of incorporation giving rise to a right to dissent under section 621.

(f) A transaction giving rise to a right to dissent under section 754.

(g) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) Unless otherwise provided in the articles of incorporation, bylaws, or a resolution of the board, a shareholder may not dissent from any of the following:

(a) Any corporate action set forth in subsection (1)(a) to (e) as to shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, on the record date fixed to vote on the corporate action or on the date the resolution of the parent corporation's board is adopted in the case of a merger under section 711 that does not require a shareholder vote under section 713.

(b) A transaction described in subsection (1)(a) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the merger, or any combination of cash and those shares.

(c) A transaction described in subsection (1)(b) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the share exchange, or any combination of cash and those shares.

(d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution providing for distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of closing of the transaction, if the transaction is for cash, shares that satisfy the requirements of subdivision (a) on the date of closing, or any combination of cash and those shares.

(e) A transaction described in subsection (1)(d) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the conversion, or any combination of cash and those shares.

(3) A shareholder entitled to dissent and obtain payment for his or her shares under subsection (1)(a) to (f) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(4) A shareholder who exercises his or her right to dissent and seek payment for his or her shares under subsection (1)(g) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.