(*iii*) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(b) An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in subsection (4)(a).

451.2402 Agent registration; requirements; exemptions; employment or association; acting as agent for more than 1 broker-dealer or issuer; exception.

Sec. 402. (1) An individual shall not transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (2).

(2) Each of the following individuals is exempt from the registration requirement of subsection (1):

(a) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934, 15 USC 78o.

(b) An individual who represents a broker-dealer that is exempt under section 401(2) or (4).

(c) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(d) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 202, other than section 202(1)(k) or (n).

(e) An individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933, 15 USC 77r, is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(f) An individual who represents a broker-dealer registered in this state under section 401(1) or exempt from registration under section 401(2) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record.

(g) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(h) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

(i) An employee of a person licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage loans as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, when acting as an employee of the licensed or registered person.

(j) Any other individual exempted by rule or order under this act.

(3) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling, or purchasing its securities in this state.

(4) A broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, shall not employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (1) or exempt from registration under subsection (2).

(5) An individual shall not act as an agent for more than 1 broker-dealer or more than 1 issuer at a time, unless the broker-dealers or the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this act.

451.2403 Investment advisor registration; requirements; exemptions; employment or association with certain individuals prohibited; exception.

Sec. 403. (1) A person shall not transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (2).

(2) The following persons are exempt from the registration requirement of subsection (1):

(a) A person that does not have a place of business in this state and that is registered under the securities act of the state in which the person has its principal place of business, if its only clients in this state are any of the following:

(*i*) Federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act.

(*ii*) Institutional investors.

(*iii*) Bona fide preexisting clients whose principal places of residence are not in this state, if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence.

(*iv*) Any other client exempted by rule or order under this act.

(b) A person that does not have a place of business in this state if the person has had, during the preceding 12 months and in addition to those described in subdivision (a), not more than 5 clients who are natural persons and residents of this state.

(c) A person that does not hold itself out to the general public as an investment adviser and that has had, during the preceding 12 months and in addition to those described in subdivision (a), not more than 5 clients who are natural persons, who are residents of this state, and who are accredited investors as defined in rule 501(a) under the securities act of 1933, 17 CFR 230.501.

(d) The person is an investment adviser who is not required to be registered as an investment adviser under the investment advisers act of 1940 if the investment adviser's only clients in this state are other investment advisers, federal covered advisers, broker-dealers, or institutional investors.

(e) Any other person exempted by rule or order under this act.

(3) An investment adviser shall not, directly or indirectly, employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. If the investment adviser request and good cause is shown, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection.

(4) An investment adviser shall not employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 404(1) or is exempt from registration under section 404(2).

451.2404 Investment advisor representative; registration; requirements; exemption; employment or association; transacting business for more than 1 investment adviser; referral fees.

Sec. 404. (1) An individual shall not transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (2).

(2) Each of the following individuals is exempt from the registration requirement of subsection (1):

(a) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 403(2) or a federal covered investment adviser that is excluded from the notice filing requirements of section 405.

(b) Any other individual exempted by rule or order under this act.

(3) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under section 405.

(4) An individual may transact business as an investment adviser representative for more than 1 investment adviser or federal covered investment adviser unless a rule or order under this act prohibits or limits an individual from acting as an investment adviser representative for more than 1 investment adviser or federal covered investment adviser.

(5) An individual acting as an investment adviser representative shall not, directly or indirectly, conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization. If a federal covered investment adviser requests and good cause is shown, the administrator, by order, may waive, in whole or in part, the application of the requirements of this subsection.

(6) An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under section 405, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under section 405, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

451.2405 Federal covered investment adviser; filing requirements; exceptions; notice; effectiveness of filing.

Sec. 405. (1) Except with respect to a federal covered investment adviser described in subsection (2), a federal covered investment adviser shall not transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (3).

(2) The following federal covered investment advisers are not required to comply with subsection (3):

(a) A federal covered investment adviser without a place of business in this state if its only clients in this state are any of the following:

(*i*) Federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act.

(*ii*) Institutional investors.

(*iii*) Bona fide preexisting clients whose principal places of residence are not in this state.

(*iv*) Other clients specified by rule or order under this act.

(b) A federal covered investment adviser that does not have a place of business in this state if the federal covered investment adviser has had, during the preceding 12 months, not more than 5 clients that are residents of this state in addition to those specified under subdivision (a).

(c) Any other person excluded by rule or order under this act.

(3) A person acting as a federal covered investment adviser, not excluded under subsection (2), shall file a notice, a consent to service of process complying with section 611, and those records that have been filed with the securities and exchange commission under the investment advisers act of 1940 that are required by rule or order under this act and pay the fees specified in section 410(5).

(4) A notice under subsection (3) is effective on filing.

451.2406 Registration by broker-dealer, agent, investment adviser, or investment adviser representative; application; fee; correcting amendment; effectiveness of registration; renewal; other conditions or waivers.

Sec. 406. (1) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 611 and paying the fee specified in section 410 and any reasonable fees charged by the designee of the administrator for processing the filing. Each application must contain both of the following:

(a) The information or record required for the filing of a uniform application.

(b) If requested by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(2) If the information or record contained in an application that is filed under subsection (1) is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(3) If an order is not in effect and no proceeding is pending under section 412, registration becomes effective at 12 noon on the forty-fifth day after a completed application is filed unless the registration is denied. A rule or order under this act may set an earlier effective date or may defer the effective date until 12 noon on the forty-fifth day after the filing of any amendment completing the application.

(4) A registration is effective until 12 midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 412, a registration may be automatically renewed each year by filing the records required by rule or order under this act and paying the fee specified in section 410 and the costs charged by the designee of the administrator for processing the filings.

(5) A rule or order under this act may impose other conditions not inconsistent with the national securities markets improvement act of 1996, Public Law 104-290, or an order under this act may waive, in whole or in part, specific requirements in connection with registration if the imposition or waiver is appropriate in the public interest and for the protection of investors.

451.2407 Succession or change in registration of broker-dealer or investment adviser; change in organization, name, or control.

Sec. 407. (1) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under section 401 or 403, or a notice under section 405, for the unexpired portion of the current registration or notice filing.

(2) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment is effective when filed or on a date designated by the registrant in the filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. Any predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(3) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment is effective when filed or on a date designated by the registrant.

(4) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule or order under this act.

451.2408 Termination of employment or association of agent and investment adviser representative; notice; other employment or association; withdrawal of temporary registration; power of administrator to prevent transfer; cancellation or termination of registration or application; reinstatement.

Sec. 408. (1) If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may file the notice.

(2) If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act or a federal covered investment adviser that has filed a notice under section 405 and begins employment by or association with another investment

adviser registered under this act or a federal covered investment adviser that has filed a notice under section 405, then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of section 406(1) and payment of the filing fee required under section 410, 1 of the following applies to the registration of the agent or investment adviser representative:

(a) If the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months, the registration is immediately effective as of the date of the completed filing.

(b) If the agent's central registration depository record or the investment adviser representative's investment adviser registration depository record contains a new or amended disciplinary disclosure within the preceding 12 months, the registration is temporarily effective as of the date of the completed filing.

(3) If there are or were grounds for discipline under section 412, the administrator may withdraw a temporary registration within 30 days after the application is filed. If the administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the thirty-first day after filing.

(4) The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (2)(a) or (b) based on the public interest and the protection of investors.

(5) If the administrator determines that a registrant or applicant for registration is no longer in existence, has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, is the subject of an adjudication of incapacity, is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule or order under this act may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

451.2409 Withdrawal of registration by broker-dealer, agent, investment adviser, or investment adviser representative.

Sec. 409. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative is effective 60 days after an application to withdraw is filed or within a shorter period as provided by rule or order under this act, unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal is effective when and on conditions required by rule or order under this act. The administrator may institute a revocation or suspension proceeding under section 412 within 1 year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

451.2410 Filing fees.

Sec. 410. (1) Before October 1, 2012, a person shall pay a fee of $300.00 when initially filing an application for registration as a broker-dealer and a fee of $300.00 when filing a renewal of registration as a broker-dealer. After September 30, 2012, a person shall pay a fee of $250.00 when initially filing an application for registration as a broker-dealer and a fee of $250.00 when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(2) Before October 1, 2012, an individual shall pay a fee of $65.00 when filing an application for registration as an agent, a fee of $65.00 when filing a renewal of registration as an agent,

and a fee of $65.00 when filing for a change of registration as an agent. After September 30, 2012, an individual shall pay a fee of $30.00 when filing an application for registration as an agent, a fee of $30.00 when filing a renewal of registration as an agent, and a fee of $30.00 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(3) Before October 1, 2012, a person shall pay a fee of $200.00 when filing an application for registration as an investment adviser and a fee of $200.00 when filing a renewal of registration as an investment adviser. After September 30, 2012, a person shall pay a fee of $150.00 when filing an application for registration as an investment adviser and a fee of $150.00 when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(4) Before October 1, 2012, an individual shall pay a fee of $65.00 when filing an application for registration as an investment adviser representative, a fee of $65.00 when filing a renewal of registration as an investment adviser representative, and a fee of $65.00 when filing a change of registration as an investment adviser representative. After September 30, 2012, an individual shall pay a fee of $30.00 when filing an application for registration as an investment adviser representative, a fee of $30.00 when filing a renewal of registration as an investment adviser representative, and a fee of $30.00 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(5) Before October 1, 2012, a federal covered investment adviser required to file a notice under section 405 shall pay an initial and annual notice fee of $200.00. After September 30, 2012, a federal covered investment adviser required to file a notice under section 405 shall pay an initial and annual notice fee of $150.00.

(6) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order requires under this act.

(7) An investment adviser representative who is registered as an agent under section 402 and who represents a person that is both registered as a broker-dealer under section 401 and registered as an investment adviser under section 403 or required as a federal covered investment adviser to make a notice filing under section 405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

451.2411 Financial requirements; reports; records; audits or inspections; custody and discretionary authority bond or insurance; furnishing information to clients; continuing education.

Sec. 411. (1) Subject to section 15(h) of the securities act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a rule or order under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(2) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222(b) of the investment advisers act of 1940, 15 USC 80b-18a, a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file financial reports required by rule or order under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(3) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a broker-dealer registered

or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule or order of the administrator. The records required to be maintained under this subsection shall be maintained as follows:

(a) Broker-dealer records may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934, 15 USC 78q, if they are readily accessible to the administrator.

(b) Investment adviser records may be maintained in any form of data storage required by rule or order under this act.

(4) The records of a broker-dealer registered or required to be registered under this act and of an investment adviser registered or required to be registered under this act are subject to reasonable periodic, special, or other audits or inspections by a representative of the administrator, in or outside of this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(5) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a rule or order under this act may require a broker-dealer and investment adviser that has custody of or discretionary authority over funds or securities of a client to obtain insurance or post a bond or other satisfactory form of security in an amount established by the administrator by rule or order. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if commenced within the time limitations in section 509(10)(b).

(6) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule or order under this act may prohibit, limit, or impose conditions on the custody of funds or securities of a customer by a broker-dealer and on the custody of securities or funds of a client by an investment adviser.

(7) With respect to an investment adviser registered or required to be registered under this act, a rule or order under this act may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(8) A rule or order under this act may require an individual registered under section 402 or 404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule or order under this act may require continuing education for an individual registered under section 404.

451.2412 Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration; discipline; examination; summary actions; liability of control person; limitation on proceeding.

Sec. 412. (1) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may deny an application or condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or any person directly or indirectly in control of the broker-dealer or investment adviser.

(2) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not do any of the following:

(a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than 1 year after the date of the order on which it is based.

(b) Under subsection (4)(e)(*i*) or (*ii*), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

(3) If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (*l*) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of $10,000.00 for a single violation or $500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(a) The person filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) The person willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(c) The person was convicted of any felony or within the previous 10 years was convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(*i*) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(*ii*) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(*iii*) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.

(*iv*) A court adjudicating a United States postal service fraud.

(*v*) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.

(*vi*) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.

(f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

(g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.

(h) The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 411(4) or refuses access to a registrant's office to conduct an audit or inspection under section 411(4).

(i) The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(j) The person has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this paragraph when the deficiency is corrected.

(k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:

(*i*) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(*ii*) The person was found to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of

securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(*iii*) The person was found to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(*l*) The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. If an application is made by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this subdivision if the individual has successfully completed all examinations required by subsection (5). The administrator may require an applicant for registration under section 402 or 404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(5) A rule or order under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order under this act may waive an examination as to an individual and a rule under this act may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(6) The administrator may suspend or deny an application summarily, restrict, condition, limit, or suspend a registration, or censure, bar, or impose a civil fine on a registrant pending final determination of an administrative proceeding. On the issuance of the order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested by a person subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant.

(b) Opportunity for hearing has been given to the applicant or registrant.

(c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (1) to (3) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a basis for discipline under this section.

(9) The administrator shall not institute a proceeding under subsection (1), (2), or (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator actually knew the material facts.

451.2413 Broker-dealer acting as finder; prohibited conduct.

Sec. 413. A broker-dealer acting as a finder shall not do any of the following:

(a) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(b) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of the broker-dealer's finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, and any beneficial interest, direct or indirect, of the broker-dealer, or a member of the broker-dealer's immediate family if the broker-dealer is an individual, in the issue of the securities that are the subject of services as a finder.

(c) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the broker-dealer makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, the broker-dealer's activities as a finder do not violate section 301.

(d) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This section does not require independent investigation or alteration of offering materials furnished to the broker-dealer.

(e) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of the broker-dealer's finding activities of any material information which the broker-dealer knows, or in the exercise of reasonable care should know based on the information furnished to the broker-dealer, is material in making an investment decision, until conclusion of the transaction.

(f) Locate, introduce, or refer persons that the broker-dealer knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

ARTICLE 5

FRAUD AND LIABILITIES

451.2501 Unlawful conduct; fraud.

Sec. 501. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, to directly or indirectly do any of the following:

(a) Employ a device, scheme, or artifice to defraud.

(b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

451.2502 Investment advice or publications; prohibited conduct; rule or order.

Sec. 502. (1) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities, or that, for compensation and as

part of a regular business, issues or promulgates analyses or reports relating to securities, to do any of the following:

(a) Employ a device, scheme, or artifice to defraud another person.

(b) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(2) An investment adviser acting as a finder shall not do any of the following:

(a) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(b) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities that are the subject of services as a finder.

(c) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, his or her activities as a finder do not violate section 301.

(d) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This subdivision does not require independent investigation or alteration of offering materials furnished to the finder.

(e) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making an investment decision, until conclusion of the transaction. This subdivision does not require the finder to independently generate information.

(f) Locate, introduce, or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

(3) A rule or order under this act may do any of the following:

(a) Define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(b) Specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

451.2503 Civil action or administrative proceeding; burden of proof.

Sec. 503. (1) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

(2) In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

451.2504 Sales and advertising literature; filing.

Sec. 504. (1) Subject to subsection (2), a rule or order under this act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act.

(2) This section does not apply to sales and advertising literature specified in subsection (1) relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 201, 202, or 203 except as required under section 201(g).

451.2505 Misleading filings.

Sec. 505. A person shall not make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

451.2506 Misrepresentations concerning registration or exemption.

Sec. 506. The filing of an application for registration, a registration statement, a notice filing under this act, or the registration of a person, the notice filing by a person, or the registration of a security under this act does not constitute a finding by the administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. A person shall not make or cause to be made to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

451.2507 Immunity from liability.

Sec. 507. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

451.2508 Violations; penalties.

Sec. 508. (1) A person that willfully violates this act or a rule adopted or order issued under this act, except section 504 or the notice filing requirements of section 302 or 405, or that willfully violates section 505 knowing the statement made to be false or misleading in a material respect, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) The attorney general or the proper prosecuting attorney may institute appropriate criminal proceedings under this act with or without a reference from the administrator.

(3) This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

451.2509 Civil liability; joint and several liability; statute of limitations; violative contract; waiver prohibited; other rights or remedies.

Sec. 509. (1) Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998.

(2) A person is liable to the purchaser if the person sells a security in violation of section 301, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. All of the following apply to an action under this subsection:

(a) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at 6% per year from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at 6% from the date of purchase, costs, and reasonable attorney fees determined by the court.

(3) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, if the seller did not know of the untruth or omission and the purchaser does not sustain the burden of proving that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. All of the following apply to an action under this subsection:

(a) The seller may maintain an action to recover the security, any income received on the security, costs, and reasonable attorney fees determined by the court, on the tender of the purchase price, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, interest at 6% from the date of sale of the security, costs, and reasonable attorney fees determined by the court.

(4) A person acting as a broker-dealer or agent that sells or buys a security in violation of section 401(1), 402(1), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (2) or, if a seller, a remedy as specified in subsection (3).

(5) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 403(1), 404(1), or 506 is

liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at 6% from the date of payment, costs, and reasonable attorney fees determined by the court.

(6) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct that gives rise to liability under this subsection, interest at 6% from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(7) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (2) to (6):

(a) A person that directly or indirectly controls a person liable under subsections (2) to (6), unless the controlling person sustains the burden of proving that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(b) An individual who is a managing partner, executive officer, or director of a person liable under subsections (2) to (6), including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(c) An individual who is an employee of or associated with a person liable under subsections (2) to (6) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(d) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (2) to (6), unless the person sustains the burden of proving that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

(8) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(9) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(10) A person may not obtain relief if an action is not commenced within 1 of the following time limits, as applicable:

(a) Under subsection (2) for violation of section 301, or under subsection (4) or (5), unless the action is commenced within 1 year after the violation occurred.

(b) Under subsection (2), other than for violation of section 301, or under subsection (3) or (6), unless the action is commenced within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation occurred.

(11) A person that has made or engaged in the performance of a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported

right under the contract with knowledge of the facts by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(12) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(13) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 411(5).

451.2510 Purchaser, seller, or recipient of investment advice; action prohibited.

Sec. 510. A purchaser, seller, or recipient of investment advice may not maintain an action under section 509 if all of the following are met:

(a) The purchaser, seller, or recipient of investment advice receives in a record, before the action is commenced, an offer that does all of the following:

(*i*) States the respect in which liability under section 509 may have arisen and fairly advises the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, including financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice.

(*ii*) If the basis for relief under this section may have been a violation of section 509(2), offers to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at 6% per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, offers to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at 6% from the date of purchase in cash equal to the damages computed in the manner provided in this subsection.

(*iii*) If the basis for relief under this section may have been a violation of section 509(3), offers to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at 6% from the date of the sale, or if the purchaser no longer owns the security, offers to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at 6% from the date of the sale.

(*iv*) If the basis for relief under this section may have been a violation of section 509(4), and if the customer is a purchaser, offers to pay as specified in subdivision (a)(*ii*) or, if the customer is a seller, offers to tender or to pay as specified in subdivision (a)(*iii*).

(*v*) If the basis for relief under this section may have been a violation of section 509(5), offers to reimburse in cash the consideration paid for the advice and interest at 6% from the date of payment.

(*vi*) If the basis for relief under this section may have been a violation of section 509(6), offers to reimburse in cash the consideration paid for the advice and the amount of any actual damages that may have been caused by the conduct, and interest at 6% from the date of the violation causing the loss.

(*vii*) States that the offer must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient

of investment advice or within a shorter period of not less than 3 days that the administrator, by order, specifies.

(b) The offeror has the present ability to pay the amount offered or to tender the security under subdivision (a).

(c) The offer under subdivision (a) is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

(d) The purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (a) in a record within the period specified under subdivision (a)(*vii*) is paid in accordance with the terms of the offer.

ARTICLE 6

ADMINISTRATION AND JUDICIAL REVIEW

451.2601 Administration of act.

Sec. 601. (1) The administrator shall administer this act.

(2) The administrator or officer, employee, or designee of the administrator shall not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 607(2). This act does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 602, 607(3), or 608.

(3) This act does not create or diminish any privilege or exemption that exists at common law, by statute, by rule, or otherwise.

(4) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(5) The securities investor education and training fund is created in the state treasury. All of the following apply to the securities investor education and training fund:

(a) The state treasurer shall credit to the fund all civil fines, costs of investigations, and other administrative assessments received under this act and may receive money or other assets from any source for deposit into the fund.

(b) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(c) If the amount of money in the fund at the close of any fiscal year is $1,000,000.00 or less, that money shall remain in the fund and shall not lapse to the general fund. If the amount of money in the fund at the close of any fiscal year is more than $1,000,000.00, $1,000,000.00 shall remain in the fund and shall not lapse to the general fund, and the balance of the money shall be credited to the general fund.

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

(e) The administrator shall use or disburse money appropriated from the fund for the education and training of Michigan residents in matters concerning securities laws and investment issues.

(6) All fees and civil or administrative fines received under this act shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

451.2602 Investigation and subpoenas; powers and authority of administrator; failure to comply; privilege against self-incrimination; assistance to securities regulator of another jurisdiction.

Sec. 602. (1) The administrator may do any of the following:

(a) Conduct public or private investigations in or out of this state that the administrator considers necessary or appropriate to determine whether any person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or the adoption of rules and forms under this act.

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be commenced.

(c) Publish a record concerning an action, proceeding, or investigation under, or a violation of, this act or a rule adopted or order issued under this act if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(2) For the purpose of an investigation under this act, the administrator or a designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(3) If a person fails to appear or refuses to testify, file a statement, produce records, or otherwise fails to obey a subpoena as required by the administrator under this act, the administrator may refer the matter to the attorney general or the proper prosecuting attorney, who may apply to the circuit court of Ingham county or a court of another state to enforce compliance. The court may do any of the following:

(a) Hold the person in contempt.

(b) Order the person to appear before the administrator.

(c) Order the person to testify about the matter under investigation or in question.

(d) Order the production of records.

(e) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

(f) Order a civil fine of not less than $10,000.00 and not more than $500,000.00 for each violation.

(g) Grant any other necessary or appropriate relief.

(4) This section does not preclude a person from applying to the circuit court of Ingham county or a court of another state for appropriate relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(5) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this act or in an action commenced or proceeding instituted by the administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, administrative or civil fine, or forfeiture. If the individual refuses to testify, file a statement, or produce a

record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the circuit court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other information compelled under a court order obtained under this subsection shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury, contempt, or otherwise failing to comply with the order.

(6) At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters which the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

451.2603 Civil action; enforcement; authority of court; bond.

Sec. 603. (1) If it appears to the administrator that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act, the administrator may maintain an action in the circuit court to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(2) In an action under this section and upon a proper showing, the court may do any of the following:

(a) Issue a permanent or temporary injunction, restraining order, or a declaratory judgment.

(b) Issue an order for other appropriate or ancillary relief, including any of the following:

(*i*) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, which may be the administrator, for the defendant or the defendant's assets.

(*ii*) An order to the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits, to collect debts, and to acquire and dispose of property.

(*iii*) The imposition of a civil fine of not more than $10,000.00 for a single violation or $500,000.00 for multiple violations.

(*iv*) An order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act.

(*v*) An order for the payment of prejudgment and postjudgment interest.

(c) Granting other relief that the court considers appropriate.

(3) The administrator shall not be required to post a bond in an action under this section.

451.2604 Enforcement; order and notice; procedure; final order; civil penalties; failure to comply; enforcement of order; petition; additional penalty.

Sec. 604. (1) If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the administrator may do 1 or more of the following:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act.

(b) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 401(2)(a)(*iv*) or (*vi*) or an investment adviser under section 403(2)(a)(*iii*).

(c) Issue an order under section 204.

(2) An order under subsection (1) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil fine or costs of the investigation the administrator will seek, a statement of the reasons for the order, and notice that the matter will be scheduled for a hearing within 15 days after receipt of a request in a record from the person. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including any civil fine imposed or requirement for payment of the costs of investigation sought in a statement in that order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(3) If a hearing is requested or ordered pursuant to subsection (2), the hearing shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The final order may make final, vacate, or modify the order issued under subsection (1).

(4) In a final order issued under this section, the administrator may do any of the following:

(a) Impose a civil fine of not more than $10,000.00 for a single violation of this act or a rule adopted or order issued under this act or $500,000.00 for multiple violations.

(b) In addition to a civil fine imposed under subdivision (a), if the violation or violations of this act or a rule adopted or order issued under this act includes an act, practice, or course of business directed at, or that resulted in damage to, any of the following, the administrator may impose a civil fine of not more than $10,000.00 for a single violation or $500,000.00 for multiple violations:

(*i*) One or more individuals who are 60 years of age or older.

(*ii*) One or more individuals who the administrator determines were unable to protect their financial interests due to disability or illiteracy or an inability to understand the language of an agreement presented to them.

(c) Charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

(5) If a petition for judicial review of a final order is not filed in accordance with section 609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The filed order shall have the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(6) If a person fails to comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court shall not require the administrator to post a bond. If the court finds, after service and opportunity for hearing, that the person is not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose an additional civil fine against the person for contempt in an amount not less than $10,000.00 or more than $500,000.00 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

451.2605 Forms; orders; rules; financial statement; interpretative opinions; conduct of hearing.

Sec. 605. (1) The administrator may do any of the following:

(a) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act, and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

(b) By rule, define terms, whether or not used in this act, if the definitions are not inconsistent with this act.

(c) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(2) A rule or form shall not be adopted or amended or an order issued or amended under this act unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, section 608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including in the adoption of uniform rules, forms, and procedures.

(3) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, and section 222 of the investment advisers act of 1940, 15 USC 80b-18a, the administrator may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule or order under this act. A rule or order under this act may establish any of the following:

(a) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, and section 222 of the investment advisers act of 1940, 15 USC 80b-18a, the form and content of financial statements required under this act.

(b) Whether unconsolidated financial statements must be filed.

(c) Whether required financial statements must be audited by an independent certified public accountant.

(4) The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule or order under this act may charge a reasonable fee for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this act.

(5) A civil or administrative fine under this act shall not be imposed and liability does not arise for conduct that is engaged in or omitted in good faith conformity with a rule, form, or order of the administrator under this act.

(6) A hearing in an administrative proceeding under this act shall be conducted in public unless the administrator for good cause consistent with the purposes intended by this act determines that the hearing not be public.

451.2606 Availability of filings to public.

Sec. 606. (1) The administrator shall maintain, or designate a person to maintain, a register of all applications for registration of securities; registration statements; notice filings, applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no-action determinations issued under this act.

(2) The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(3) Upon request, the administrator shall furnish to a person a copy of a record that is a public record or a certification that the public record does not exist. A rule under this act may establish a reasonable charge for furnishing the record. A copy of the record certified or a certificate of its nonexistence by the administrator is prima facie evidence of a record or its nonexistence.

451.2607 Public records; confidentiality.

Sec. 607. (1) Subject to subsection (2), records obtained by the administrator or filed under this act, including a record contained in or filed with any registration statement, application, notice filing, or report, are public records and are available for public examination.

(2) The following records are not public records and are not available for public examination under subsection (1):

(a) A record obtained by the administrator in connection with an audit or inspection under section 411(4) or an investigation under section 602.

(b) A part of a report filed in connection with a registration statement under sections 301 and 303 through 305, or a record under section 411(4), that contains trade secrets or confidential information when the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law.

(c) A record that is not required to be provided to the administrator or filed under this act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

(d) A nonpublic record received from a person specified in section 608.

(e) Any social security number, residential address unless used as a business address, or residential telephone number unless used as a business telephone number contained in a record that is filed.

(f) A record obtained by the administrator through a designee of the administrator that is determined by a rule or order under this act to have been either of the following:

(*i*) Appropriately expunged from the administrator's records by that designee.

(*ii*) Appropriately determined to be nonpublic or nondisclosable by that designee if the administrator finds that this is in the public interest and for the protection of investors.

(3) The administrator may disclose a record obtained in connection with an audit or inspection under section 411(4) or a record obtained in connection with an investigation under section 602 if disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 608(1).

451.2608 Uniformity and cooperation with other agencies.

Sec. 608. (1) The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 607, share records and information with the securities regulators of 1 or more states, Canada or 1 or more of its provinces or territories, 1 or more foreign jurisdictions, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, federal or state banking and insurance regulators, and any governmental law enforcement agency, in order to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, and state and foreign governments.

(2) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the administrator shall, in the discretion of the administrator, take into consideration in carrying out the public interest the following general policies:

(a) Maximizing effectiveness of regulation for the protection of investors.

(b) Maximizing uniformity in federal and state regulatory standards.

(c) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(3) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(a) Establishing or employing 1 or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act.

(b) Developing and maintaining uniform forms.

(c) Conducting a joint examination or investigation.

(d) Holding a joint administrative hearing.

(e) Instituting and prosecuting a joint civil or administrative proceeding.

(f) Sharing and exchanging personnel.

(g) Coordinating registrations under sections 301 and 401 through 404 and exemptions under section 203.

(h) Sharing and exchanging records.

(i) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.

(j) Formulating common systems and procedures.

(k) Notifying the public of proposed rules, forms, statements of policy, and guidelines.

(*l*) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private organizations involved in capital formation, considered to be necessary or appropriate to promote or achieve uniformity.

(m) Developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

451.2609 Judicial review.

Sec. 609. (1) Final orders issued by the administrator under this act are subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Rules adopted under this act are subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

451.2610 Applicability of sections; sales or offers to sell; purchases or offers to purchase; offer in this state; acceptance in this state; publications; radio, television, or electronic communication; prohibited or actionable conduct.

Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1), 404(1), 501, 506, 509, and 510 apply to a person that sells or offers to sell a security if the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509, and 510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if either of the following apply to the offer:

(a) It originates from this state.

(b) It is directed by the offeror to a place in this state and received at the place to which it is directed.

(4) For purposes of this section, an offer to purchase or to sell is accepted in this state whether or not either party is then present in this state, if both of the following apply to the acceptance:

(a) It is communicated to the offeror in this state, the offeree reasonably believes the offeror to be present in this state, and the acceptance is received at the place in this state to which it is directed.

(b) It has not previously been communicated to the offeror, orally or in a record, outside this state.

(5) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than 2/3 of its circulation outside this state during the previous 12 months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio, television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless any of the following are met:

(a) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

(b) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state.

(c) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

(d) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(6) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

451.2611 Service of process.

Sec. 611. (1) A consent to service of process complying with this section required by this act must be signed and filed in the form required by a rule or order under this act. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor, or personal representative under this act or a rule adopted or order issued by the administrator under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(2) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued by the administrator under this act and the person has not filed a consent to service of process under subsection (1), that act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person, the person's successor, or personal representative.

(3) Service under subsection (1) or (2) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless both of the following are met:

(a) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address given in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice.

(b) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court or the administrator in a proceeding before the administrator allows.

(4) Service as provided in subsection (3) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(5) If the process is served under subsection (3), the court or the administrator in a proceeding before the administrator shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

451.2612 Severability clause.

Sec. 612. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

ARTICLE 7

TRANSITION

451.2701 Effective date.

Sec. 701. This act takes effect October 1, 2009.

451.2702 Repeal of MCL 451.501 to 451.818.

Sec. 702. The uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, is repealed.

451.2703 Pending actions, prosecutions, or proceedings; predecessor act.

Sec. 703. (1) The predecessor act exclusively governs all actions, prosecutions, or proceedings that are pending or may be maintained or instituted on the basis of facts or circumstances occurring before the effective date of this act, but a civil action shall not be maintained to enforce any liability under the predecessor act unless commenced within any period of limitation that applied when the cause of action accrued or within 3 years after the effective date of this act, whichever is earlier.

(2) All effective registrations under the predecessor act, all administrative orders relating to the registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and all conditions imposed upon the registrations under the predecessor act remain in effect for the same time period they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(3) The predecessor act exclusively governs any offer or sale made within 1 year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

This act is ordered to take immediate effect.
Approved January 15, 2009.
Filed with Secretary of State January 16, 2009.

[No. 552]

(HB 5018)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 14j of chapter XVII (MCL 777.14j), as added by 2002 PA 29.

The People of the State of Michigan enact:

CHAPTER XVII

777.14j Applicability of chapter to certain felonies; MCL 450.775 to 451.2508.

Sec. 14j. This chapter applies to the following felonies enumerated in chapters 450 and 451 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
450.775	Pub ord	H	Corporations — minority and woman owned businesses	2
450.795	Pub ord	H	Corporations — handicapper business opportunity act	2
451.319	Pub trst	G	Securities, real estate, and debt management — violation	2
451.434	Pub trst	H	Debt management act — licensee violations	2
451.2508	Pub trst	E	Securities act violation	10

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5008 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved January 15, 2009.
Filed with Secretary of State January 16, 2009.

Compiler's note: House Bill No. 5008, referred to in enacting section 1, was filed with the Secretary of State January 16, 2009, and became 2008 PA 551, Eff. Oct. 1, 2009.

[No. 553]

(HB 5691)

AN ACT to amend 1985 PA 106, entitled "An act to impose a state excise tax on persons engaged in the business of providing rooms for dwelling, lodging, or sleeping purposes to transient guests in certain counties; to provide for the levy, assessment, and collection of the tax; to provide for the disposition and appropriation of the collections from the tax; to create a convention facility development fund; to authorize the distributions from the fund; to authorize the use of distributions from the tax as security for any bonds, obligations, or other evidences of indebtedness issued to finance convention facilities as provided by law; to prescribe certain other matters relating to bonds, obligations, or other evidences of indebtedness issued for such purposes," by amending sections 3, 8, 9, 10, 12, and 20 (MCL 207.623, 207.628, 207.629, 207.630, 207.632, and 207.640), section 3 as amended by 2006 PA 609, sections 8, 9, and 10 as amended by 2007 PA 72, and section 12 as amended by 2002 PA 237.

The People of the State of Michigan enact:

207.623 Definitions.

Sec. 3. As used in this act:

(a) "Accommodations" means the room or other space provided to transient guests for dwelling, lodging, or sleeping, including furnishings and other accessories, in a facility that is not a campground, hospital, nursing home, emergency shelter, or community mental health or community substance abuse treatment facility. Accommodations do not include food or beverages.

(b) "Commissioner" means the state treasurer.

(c) "Convention facility" means 1 or more facilities owned or leased by a local governmental unit that are any combination of a convention hall, auditorium, meeting rooms, and exhibition areas that are separate and distinct and contiguous to each other, and related adjacent public areas generally available to members of the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events and the necessary site or sites, together with appurtenant properties necessary and convenient for use in connection with the facility.

(d) "Convention hotel" means a facility used in the business of providing accommodations that has more than 80 rooms for providing accommodations to transient guests and that complies with all of the following:

(*i*) Located within a county having a population according to the most recent decennial census of 700,000 or more.

(*ii*) Located within a county that is 1 or more of the following:

(A) A county that has a convention facility with 350,000 square feet or more of total exhibit space.

(B) A county that has 2,000 or more rooms to provide accommodations for transient guests.

(e) "Local governmental unit" means a county, township, city, village, or a metropolitan authority formed under the regional convention facility authority act.

(f) "Person" means a natural person, partnership, fiduciary, association, corporation, or other entity.

(g) "Room charge" means the charge imposed for the use or occupancy of accommodations, excluding charges for food, beverages, telephone services, the use tax imposed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or like services paid in connection with the charge. Room charge does not include reimbursement of the assessment imposed by the community convention or tourism marketing act, 1980 PA 395, MCL 141.871 to 141.880, the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, or this act.

(h) "Transient guest" means a natural person staying less than 30 consecutive days.

207.628 State convention facility development fund; creation; disposition of collections; use of fund; contract requirement; appropriation to authority created under regional convention facility authority act.

Sec. 8. (1) The collections from the tax imposed by section 4 shall be deposited in the state treasury, to the credit of the convention facility development fund, which is hereby created within the state treasury. Collections from the additional tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, funds appropriated from the 21st century jobs trust fund under subsection (4), and amounts designated under section 5(b)(*iii*) of the health and safety fund act, 1987 PA 264, MCL 141.475, shall also be deposited to the credit of the convention facility development fund.

(2) The convention facility development fund shall be distributed for certain state purposes and to local governmental units for use only for 1 or more of the following purposes:

(a) Acquiring, constructing, improving, enlarging, renewing, replacing, or leasing a convention facility.

(b) In conjunction with an activity listed in subdivision (a), repairing, furnishing, and equipping the convention facility.

(c) Refinancing an activity listed in subdivision (a) or (b).

(d) General fund expenditures.

(e) In the case of a local governmental unit that is a metropolitan authority, for any purpose authorized under the regional convention facility authority act.

(3) A contract made by a local governmental unit for the purposes included in subsection (2)(a) or (b) concerning a convention facility funded by distributions pursuant to section 9 shall contain a fixed price or guaranteed maximum price for the total cost of activities conducted for these purposes pursuant to that contract.

(4) For the fiscal year ending September 30, 2009, $9,000,000.00 is appropriated from the 21st century jobs trust fund described in section 2 of the Michigan trust fund act, 2000 PA 489, MCL 12.252, to an authority created under the regional convention facility authority act for the purpose of developing a qualified convention facility as defined under that act.

207.629 Distribution of fund; "qualified local governmental unit" defined; certain payments prohibited.

Sec. 9. (1) Except as provided in subsection (4), on or before the thirtieth day of each month, the state treasurer shall make a distribution from the convention facility development fund to a qualified local governmental unit. The distribution shall be an amount equal to the sum of the collections from the excise tax levied for accommodations under this act for the previous month from the convention hotels in the county in which the convention facility is or is to be located and in any county in which convention hotels are located that is contiguous to the county in which the convention facility is located, or is to be located, the additional tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, for the previous month received in the fund, and any distribution received under section 5(b)(*iii*) of the health and safety fund act, 1987 PA 264, MCL 141.475, and from the 21st century jobs trust fund under section 8(4). However, distributions for any state fiscal year to any qualified local governmental unit under this section shall not exceed an amount equal to the amount pledged, assigned, or dedicated by the qualified local governmental unit pursuant to section 11 for the payment during that state fiscal year of bonds, obligations, or other evidences of indebtedness incurred for the purposes specified in this act or the regional convention facility authority act, plus operating deficit cost expenditures under section 10, plus any amount necessary to maintain a fully funded debt reserve or other reserves intended to secure the principal and interest on the bonds, obligations, or other evidences of indebtedness as contained in the resolution or ordinance authorizing their issuance.

(2) Notwithstanding the distributions provided by subsection (1), if a local governmental unit becomes a qualified local governmental unit entitled to receive distributions from the tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, or from the tax imposed by this act in counties in which the convention facility is located or in a county in which a convention hotel is located that is contiguous to the county in which the convention facility is located, and from any distribution under section 5(b)(*iii*) of the health and safety fund act, 1987 PA 264, MCL 141.475, no other qualified local governmental unit is entitled to distributions pursuant to this section for which that qualified local governmental unit has previously become entitled, until such time as that qualified local

governmental unit ownership or leasehold interest described in subsection (3) is transferred to another local governmental unit. If that transfer renders the transferee a qualified local governmental unit, the transferee shall, immediately upon that transfer, be entitled to the distributions to a qualified local governmental unit provided in subsection (1) and the priority provided to a qualified local governmental unit in this subsection, notwithstanding that the amount of the distributions may increase as a result of that transfer.

(3) As used in this act, "qualified local governmental unit" means a city, village, township, county, or authority that is located in, or includes within its territory or jurisdiction, a county in which convention hotels are located and that either is the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space on July 30, 1985 or, if such a convention facility does not exist, will be the owner or lessee of a convention facility with 350,000 square feet or more of total exhibit space through the application of distributions under this section to the purchase or lease of a convention facility.

(4) Before the 2015-2016 fiscal year, collections from the excise tax levied for accommodations under this act and collections from the tax imposed under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, shall not be paid to a qualified local governmental unit for the repayment of bonds, obligations, or other evidences of indebtedness incurred after 2007.

207.630 Distribution of money remaining in fund; priority; substance abuse treatment; quarterly distributions.

Sec. 10. (1) Any money remaining in the convention facility development fund that is not used for the bonds, obligations, or other evidences of indebtedness described in section 9 shall be distributed pursuant to subsection (2).

(2) Money in the convention facility development fund shall be distributed as provided in subsection (4) in the following order of priority in the following amounts:

(a) For each of the following fiscal years, the following amounts shall be distributed to a metropolitan authority created under the regional convention facility authority act for the operational deficit costs of a qualified convention facility operated by the authority under that act:

(*i*) $9,400,000.00 for the fiscal year ending September 30, 2009.

(*ii*) $11,000,000.00 each fiscal year for the fiscal years ending September 30, 2010 and September 30, 2011.

(*iii*) $9,000,000.00 each fiscal year for the fiscal years ending September 30, 2012 and September 30, 2013.

(*iv*) $8,000,000.00 each fiscal year for the fiscal years ending September 30, 2014 and September 30, 2015.

(*v*) $7,000,000.00 for the fiscal year ending September 30, 2016.

(*vi*) $6,000,000.00 for the fiscal year ending September 30, 2017.

(*vii*) $5,000,000.00 each fiscal year for the fiscal years ending September 30, 2018 and September 30, 2019.

(*viii*) $5,000,000.00 for the fiscal year ending September 30, 2020.

(*ix*) $5,000,000.00 for the fiscal year ending September 30, 2021.

(*x*) $5,000,000.00 for the fiscal year ending September 30, 2022.

(*xi*) $5,000,000.00 for the fiscal year ending September 30, 2023.

(b) For fiscal years ending before October 1, 2009, an amount equal to the difference, if any, between the tax imposed under this act in the preceding state fiscal year that is designated under section 9 to a qualified local governmental unit and the tax imposed under

this act that is designated under section 9 in the state fiscal year immediately preceding the preceding state fiscal year for the same local governmental unit shall be distributed to that local governmental unit. This subdivision does not apply unless a tax has been imposed under this act in the entire 2 state fiscal years immediately preceding the state fiscal year in which a distribution under this subdivision is made. Any amount distributed under this subdivision shall be used by the local governmental unit only for the retirement of outstanding bonds, obligations, or other evidences of indebtedness incurred for which distributions under section 9 are pledged. A distribution under this subdivision shall not be made to the extent that the obligations, bonds, or other evidences of indebtedness cannot be retired or are not outstanding.

(c) For fiscal years ending before October 1, 2015, an amount equal to that portion of the liquor tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to those counties in which convention hotels are not located in the same proportion that the amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from the licensees in a county bears to the total tax collections under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are not located.

(d) For fiscal years ending before October 1, 2015, the remaining money available after distributions under subdivisions (a), (b), and (c) shall be distributed to each county in the following amounts:

(*i*) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to each county in which convention hotels are not located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are not located.

(*ii*) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are located shall be distributed to each county in which convention hotels are located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the preceding state fiscal year from all counties in which convention hotels are located. However, in the calculation of the proportion represented by a county's share of distributions under this subparagraph, the amount of the tax collected from licensees in the qualified local governmental unit that received distributions under section 9 in fiscal year 2007-2008 shall not be included.

(e) For the fiscal year ending September 30, 2016, an amount equal to the product of the total amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, and distributed to all counties in the 2014-2015 fiscal year multiplied by 1.01 shall be distributed to all counties as provided in this subdivision. For fiscal years beginning after September 30, 2016, an amount equal to the product of the amount of

liquor tax distributions in the immediately preceding fiscal year multiplied by 1.01, not to exceed the total amount of tax collected under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, shall be distributed to counties. Distributions to each county under this subdivision shall be calculated as follows:

(*i*) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the immediately preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are not located shall be distributed to each county in which convention hotels are not located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from all counties in which convention hotels are not located.

(*ii*) The amount of money available to be distributed under this subdivision multiplied by the percentage of collections in the immediately preceding state fiscal year under section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, from licensees in counties in which convention hotels are located shall be distributed to each county in which convention hotels are located in the same proportion that the amount of tax collected pursuant to section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from licensees in that county bears to the total tax collections from section 1207 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.2207, in the immediately preceding state fiscal year from all counties in which convention hotels are located. However, in the calculation of the proportion represented by a county's share of distributions under this subparagraph, the amount of the tax collected from licensees in the qualified local governmental unit that received distributions under section 9 in the 2007-2008 state fiscal year shall not be included.

(f) Beginning with the fiscal year ending on September 30, 2016, and each fiscal year thereafter, if the revenue in the convention facility development fund exceeds the amounts distributed under section 9 and the distributions under subdivision (e), the excess shall be distributed to a qualified local governmental unit that is a metropolitan authority to be used by that qualified local governmental unit only for the retirement of outstanding bonds, obligations, or other evidences of indebtedness incurred for which distributions under section 9 are pledged and for a qualified governmental unit that is a metropolitan authority or next for the payment of any unfunded operational deficit costs incurred during the prior fiscal year by a metropolitan authority created under the regional convention facility authority act for the operation of a qualified convention facility under that act.

(3) A distribution to a county pursuant to this section shall be included for purposes of the calculations required to be made by section 24e of the general property tax act, 1893 PA 206, MCL 211.24e. If the governing body of a taxing unit approves the additional millage rate under section 24e of the general property tax act, 1893 PA 206, MCL 211.24e, which is due to distributions pursuant to this section, then an amount equal to 50% of the distribution under this section shall be used for substance abuse treatment within the taxing unit.

(4) Beginning October 1, 2007 and each year thereafter, from the revenue collected during the previous quarter, after distributing the monthly payments under section 9(1), the state treasurer shall make quarterly distributions under subsection (2)(b) and (c) or under subsection (2)(e). From the revenue collected in the last quarter of the state fiscal year, the state treasurer shall make the distribution under subsection (2)(a) prior to any distributions under subsection (2)(b) and (c) or (e).

207.632 Transmitting payment to trustee or trustees for bonds, obligations, or other evidences of indebtedness; prohibition; exception.

Sec. 12. (1) Subject to approval pursuant to section 11, a local governmental unit may assign or pledge all or a portion of the distribution of taxes that the local governmental unit is eligible to receive under this act for payment of bonds, obligations, or other evidences of indebtedness for the purposes specified in section 8(2). If a local governmental unit assigns, pledges, or, pursuant to section 11(3), dedicates all or a portion of the distribution of taxes that the local governmental unit is eligible to receive under this act for payment of bonds, obligations, or other evidences of indebtedness incurred for the purposes specified in this act, the state treasurer may transmit to the duly appointed trustee or trustees for the bonds, obligations, or other evidences of indebtedness, if any, the payment of the distribution assigned, pledged, or dedicated by the local governmental unit.

(2) A local governmental unit that becomes a qualified local governmental unit before May 1, 2008 shall not issue bonds, obligations, or other evidences of indebtedness to which distributions under section 9 are pledged in a principal amount greater than $180,000,000.00. This limit does not apply to refunding bonds, obligations, or other evidences of indebtedness issued pursuant to section 11(2) or to bonds, obligations, or other evidences of indebtedness to which distributions of taxes from the convention facility development fund are dedicated under section 11(3). A local governmental unit that becomes a qualified local governmental unit after December 1, 2008 shall not issue bonds, obligations, or other evidences of indebtedness to which distributions under section 9 are pledged in order to finance a total cost for all projects undertaken by the qualified local governmental unit that exceeds $299,000,000.00. The cost of a project in addition to construction and acquisition costs may include an allowance for legal, engineering, architectural, and consulting services. The following shall not be considered costs of a project and may be financed with the proceeds of bonds, obligations, or other evidences of indebtedness for which section 9 distributions are pledged:

(a) Interest on revenue obligations issued to finance the project becoming due before the collection of the first revenues available for the payment of those revenue obligations.

(b) A reserve for the payment of principal, interest, and redemption premiums on the revenue obligations of the qualified local governmental unit, and other necessary incidental expenses including, but not limited to, placement fees, fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, or commitments to purchase obligations issued pursuant to this act.

(c) Fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure.

(d) Any other fees or charges for any other security provided to assure timely payment of the obligations.

(e) Refunding bonds.

207.640 Levy of tax; time period.

Sec. 20. The tax imposed by this act shall not be levied after the earlier of December 31, 2039 or 30 days after all bonds, notes, or other obligations issued by a metropolitan authority formed under the regional convention facility authority act for purposes authorized under that act are retired.

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. 1630.

(b) Senate Bill No. 1633.

(c) Senate Bill No. 880.

(d) Senate Bill No. 881.

Approved January 15, 2009.
Filed with Secretary of State January 16, 2009.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 1630 was filed with the Secretary of State January 16, 2009, and became 2008 PA 554, Eff. Jan. 20, 2009.
Senate Bill No. 1633 was filed with the Secretary of State January 20, 2009, and became 2008 PA 586, Imd. Eff. Jan. 20, 2009.
Senate Bill No. 880 was filed with the Secretary of State January 16, 2009, and became 2008 PA 555, Eff. Jan. 20, 2009.
Senate Bill No. 881 was filed with the Secretary of State January 16, 2009, and became 2008 PA 556, Eff. Jan. 20, 2009.

[No. 554]

(SB 1630)

AN ACT to create and provide for the incorporation of certain regional convention facility authorities; to provide for the membership of the authorities; to provide for the powers and duties of the authorities; to provide for the conveyance of ownership of and operational jurisdiction over certain convention facilities to authorities and to provide for the transfer of certain real and personal property utilized as convention facilities to authorities; to provide for the assumption of certain contracts, bonds, notes, and other evidences of indebtedness and liabilities related to convention facilities by authorities; to authorize the creation of certain funds; to authorize expenditures from certain funds; to finance the acquisition of land and the development of certain convention facilities and of public improvements or related facilities; to provide for the issuance of bonds and notes; to authorize certain investments; to provide for the transfer of public employees to the employment of authorities; to provide for the allocation of liabilities related to employee benefits; to protect certain rights of local government employees; and to impose certain powers and duties upon state and local departments, agencies, and officers.

The People of the State of Michigan enact:

141.1351 Short title.

Sec. 1. This act shall be known and may be cited as the "regional convention facility authority act".

141.1353 Legislative findings.

Sec. 3. The legislature finds and declares all of the following:

(a) That there exists in this state a continuing need to strengthen and revitalize the economy of this state and of local units of government in this state and that it is in best interests of this state and local units of government in this state to promote tourism and convention business in order to assist in the prevention of unemployment and the alleviation of the conditions of unemployment, to preserve existing jobs, to facilitate economic development, and to create new jobs to meet employment demands.

(b) That it is necessary for the promotion of general welfare and a valid public purpose to assist and encourage the acquisition, construction, improvement, enlargement, renewal, replacement, repairing, financing, furnishing, and equipping of regional convention facilities

and the real property on which they are located, to refinance these activities, and to enter into contracts and procure services necessary and appropriate for the development and ongoing management and operation of regional convention facilities in an efficient and effective manner.

(c) That a regional convention facility authority created under this act and the powers conferred by this act constitute a necessary program and serve a necessary public purpose.

141.1355 Definitions.

Sec. 5. As used in this act:

(a) "Authority" means a regional convention facility authority created under section 7.

(b) "Board" means the board of directors of an authority.

(c) "Convention facility" means all or any part of, or any combination of, a convention hall, auditorium, arena, meeting rooms, exhibition area, and related adjacent public areas that are generally available to the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events, together with real or personal property, and easements above, on, or under the surface of real or personal property, used or intended to be used for holding conventions, meetings, exhibits, and similar events, together with appurtenant property, including covered walkways, parking lots, or structures, necessary and convenient for use in connection with the convention facility. Convention facility includes an adjacent arena with a seating capacity not exceeding 10,000. Convention facility does not include an adjacent arena with a seating capacity exceeding 10,000.

(d) "Develop" means to plan, acquire, construct, improve, enlarge, maintain, renew, renovate, repair, replace, lease, equip, furnish, market, promote, manage, or operate.

(e) "Fiscal year" means an annual period that begins on July 1 and ends on June 30 or the fiscal year for an authority established by the board of the authority.

(f) "Legislative body" means the elected body of a local government possessing the legislative power of the local government.

(g) "Local chief executive officer" means the mayor or city manager of a city or the county executive of a county or, if a county does not have a county executive, the chairperson of the county board of commissioners.

(h) "Local government" means a county or city. For purposes of sections 17(1)(t) and 19 other than section 19(1)(f), local government includes a building authority or downtown development authority created by a county or city under 1975 PA 197, MCL 125.1651 to 125.1681.

(i) "Qualified city" means a city with a population of more than 700,000 according to the most recent decennial census that contains a qualified convention facility.

(j) "Qualified county" means a county that contains a qualified city.

(k) "Qualified convention facility" means a publicly owned convention facility with not less than 600,000 square feet of usable exhibition area and that is located in a qualified city.

(*l*) "Qualified metropolitan area" means a geographic area of this state that includes a qualified city, a qualified county, and the 2 counties bordering the qualified county with the largest populations according to the most recent decennial census.

(m) "Transfer date" means the date 90 days after the creation of an authority under section 7 on which the right, title, interest, ownership, and control of a qualified convention facility are conveyed and transferred from a qualified city to an authority if the transfer is not disapproved as provided under section 19(1).

141.1357 Qualified metropolitan area; creation of authority; authority as municipal public body corporate and politic; powers, duties, and jurisdictions; name; transfer of qualified convention facility from qualified city to authority; exemption from taxes and special assessments; presumption of validity.

Sec. 7. (1) For an area of this state that is a qualified metropolitan area on the effective date of this act, an authority is created for the qualified metropolitan area on the effective date of this act. For an area of this state that becomes a qualified metropolitan area after the effective date of this act, an authority is created for the qualified metropolitan area on the date the area became a qualified metropolitan area. An authority created under this section shall be a municipal public body corporate and politic and a metropolitan authority authorized by section 27 of article VII of the state constitution of 1963 and shall possess the powers, duties, and jurisdictions vested in the authority under this act and other laws. The authority shall not be an authority or agency of this state. The name of an authority created under this section shall include the name of the qualified city located within the qualified metropolitan area and the phrase "regional convention facility authority".

(2) Before the transfer date, an authority may organize and exercise all powers, duties, and jurisdictions granted under this act, except the powers, duties, and jurisdictions related to the management, operation, and development of a qualified convention facility. On the transfer date, an authority is vested with the additional powers, duties, and jurisdictions under this act related to the management, operation, and development of a qualified convention facility.

(3) It is the intent of the legislature that the transfer of a qualified convention facility from a qualified city to an authority under this act and any payment required under section 19(9) represents at least a fair exchange of value for value for the qualified city considering, without limitation, all of the following:

(a) The net value of the qualified convention facility prior to the transfer date after deducting deferred maintenance obligations, operational deficits, repair or expansion needs, and other liabilities related to the qualified convention facility that are obligations of the qualified city.

(b) The benefits to the qualified city resulting from the transfer of the qualified convention facility to the authority, including, but not limited to, assumption or payment of debt obligations of the qualified city by the authority, reductions in costs, liabilities or other obligations of the qualified city, additional revenues or other money not otherwise available for the qualified convention facility, and the positive economic impact to the qualified city likely to be generated by the operation of the qualified convention facility by the authority or any expansion or improvement of the qualified convention facility by the authority, especially economic impact resulting in the creation or retention of jobs and capital investment.

(c) Any bond proceeds, debt service payments, or other money payable directly or indirectly to the qualified city after the transfer date under this act, the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, or the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(4) The property of an authority created under this act is public property devoted to an essential public and governmental purpose. Income of the authority is for a public and governmental purpose.

(5) Except as otherwise provided in this subsection, the property of the authority created under this act and its income, activities, and operations are exempt from all taxes and special assessments of this state or a political subdivision of this state. Property of an authority and its income, activities, and operations that are leased to private persons are not exempt from

any tax or special assessment of this state or a political subdivision of this state. Property of an authority is exempt from any ad valorem property taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, or other law of this state authorizing the taxation of real or personal property. An authority is an entity of government for purposes of section 4a(1)(a) of the general sales tax act, 1933 PA 167, MCL 205.54a, and section 4h of the use tax act, 1937 PA 94, MCL 205.94h.

(6) The validity of the creation of an authority shall be conclusively presumed unless questioned in an original action filed in the court of appeals within 60 days after the creation of the authority under this section. The court of appeals has original jurisdiction to hear an action under this subsection. The court shall hear the action in an expedited manner.

141.1359 Board of directors; membership; qualifications; "local government" defined; terms; vacancy; filing of appointment; oath; compensation; individuals prohibited from appointment.

Sec. 9. (1) An authority created under this act shall be directed and governed by a board of directors consisting of 5 members. The members of an authority board shall include all of the following:

(a) One individual appointed by the governor of this state with the advice and consent of the senate.

(b) One individual appointed by the local chief executive officer of the qualified city.

(c) One individual appointed by the local chief executive officer of the qualified county.

(d) One individual appointed by the local chief executive officer of the county bordering the qualified county with the highest population according to the most recent decennial census bordering the qualified county.

(e) One individual appointed by the local chief executive officer of the county bordering the qualified county with the second highest population according to the most recent decennial census.

(2) Board members appointed under this section shall possess business, financial, or professional experience relevant to the operation of a corporation or a convention facility. No board member shall be an employee or officer of any local government or of this state. For purposes of this subsection, "local government" includes any county, township, city, village, or intergovernmental entity in this state.

(3) Except as otherwise provided in this subsection, board members shall be appointed for a term of 6 years. Initial appointments under subsection (1) shall be made within 30 days of the creation of the authority. Of the board members initially appointed under subsection (1), the members appointed under subsection (1)(a) and (c) shall be appointed for a term expiring on the second August 31 following the creation of the authority, the members appointed under subsection (1)(b) and (d) shall be appointed for a term expiring on the third August 31 following the creation of the authority, the member appointed under subsection (1)(e) shall be appointed for a term expiring on the fourth August 31 following the creation of the authority. If a vacancy occurs on the board other than by expiration of a term, the vacancy shall be filled in the same manner as the original appointment for the remainder of the term. Board members may continue to serve until a successor is appointed and qualified.

(4) Each officer appointing a board member under this section shall file the appointment with the secretary of state and the county clerk of each county in the qualified metropolitan area. Notwithstanding any law or local charter provision to the contrary, appointments by an officer are not subject to approval or rejection by a legislative body.

(5) Upon appointment to a board under this section, and upon taking and filing of the oath of office required by section 1 of article XI of the state constitution of 1963, a board member shall enter office and exercise the duties of the office of board member.

(6) Board members shall serve without compensation but may be reimbursed for actual and necessary expenses incurred while attending board meetings or performing other authorized official business of the authority.

(7) An individual who is not of good moral character or who has been indicted or charged with, convicted of, pled guilty or no contest to, or forfeited bail concerning a felony under the laws of this state, any other state, or the United States shall not be appointed or remain as a member of the board.

141.1361 Board; meeting; election of chairperson and officers; actions requiring unanimous consent; business conducted at public meeting; availability of records and documents to public; system of accounts; annual audit; budget; contracts; use of competitive procurement methods; exceptions; purchases; preferences; procedures to monitor performance of contracts; employment of personnel; certain actions prohibited.

Sec. 11. (1) Within not more than 30 days following appointment of the members of a board, the board shall hold its first meeting at a date and time determined by the individual appointed under section 9(1)(a). The board members shall elect from among the board members an individual to serve as chairperson of the board and may elect other officers as the board considers necessary. All officers shall be elected annually by the board. All actions of the board under this act shall require the unanimous consent of all serving members of the board, excluding any members prohibited from voting on an action due to a conflict of interest under section 15.

(2) The business of the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A board shall adopt bylaws consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, governing its procedures and the holding of meetings. After organization, a board shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. A special meeting of the board may be called by the chairperson of the board or as provided in bylaws adopted by the board. Notice of a special meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A board shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) A board shall provide for a system of accounts for the authority to conform to a uniform system required by law and for the auditing of the accounts of an authority. The board shall obtain an annual audit of the authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements.

(5) Before the beginning of each fiscal year, a board shall cause to be prepared a budget for the authority containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay including funds for the operation and development of convention facilities under the jurisdiction of the board, including the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the authority maturing during the next fiscal year or that have previously matured and

are unpaid, and an estimate of the estimated revenue of the authority from all sources for the next fiscal year. The board shall adopt a budget as for the fiscal year in accordance with the uniform budget and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(6) A board shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items as needed by the authority to efficiently and effectively meet the needs of the authority using competitive procurement methods to secure the best value for the authority. The board shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of authority contracts. A board shall provide for the acquisition of professional services, including, but not limited to, architectural services, engineering services, surveying services, accounting services, services related to the issuance of bonds, and legal services, in accordance with a competitive, qualifications-based selection process and procedure for the type of professional service required by the authority. An authority is not required to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement. An authority may enter into a cooperative purchasing agreement with the federal government, this state, or other public entities for the purchase of goods or services necessary for the authority. An authority may enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items purchased unless otherwise prohibited by law. In all purchases made by the authority, all other things being equal, preference shall be given first to products manufactured or services offered by firms based in the authority's qualified metropolitan area, including, but not limited to, each qualified city and qualified county in the qualified metropolitan area, and next to firms based in this state, if consistent with federal law. Except as otherwise provided in this section, the authority shall utilize competitive solicitation for all purchases authorized under this act unless 1 or more of the following apply:

(a) Procurement of goods or services is necessary for the imminent protection of public health or safety or to mitigate an imminent threat to public health or safety, as determined by the authority or its chief executive officer.

(b) Procurement of goods or services is for emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.

(c) Procurement of goods or services is in response to a declared state of emergency or state of disaster under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

(d) Procurement of goods or services is in response to a declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

(e) Procurement of goods or services is in response to a declared state of energy emergency under 1982 PA 191, MCL 10.81 to 10.89.

(f) Procurement of goods or services is under a cooperative purchasing agreement with the federal government, this state, or more public entities for the purchase of goods and services necessary at fair and reasonable prices using a competitive procurement method for authority operations.

(g) The value of the procurement is less than $5,000.00, and the board has established policies or procedures to ensure that goods or services with a value of less than $5,000.00 are purchased by the board at fair and reasonable prices. Procurement of goods or services with a value of less than $5,000.00 may be negotiated with or without using competitive bidding as authorized in a procurement policy adopted by the board.

(7) A board may not enter into any cost plus construction contract unless all of the following apply:

(a) The contract cost is less than $50,000.00.

(b) The contract is for emergency repair or construction caused by unforeseen circumstances.

(c) The repair or construction is necessary to protect life or property.

(d) The contract complies with requirements of applicable state or federal law.

(8) The board shall adopt a procurement policy consistent with the requirements of this act and federal and state laws relating to procurement. The board shall adopt a policy to govern the control, supervision, management, and oversight of each contract to which the authority is a party. The board shall adopt procedures to monitor the performance of each contract including, but not limited to, a contract that exists on transfer date, to assure execution of the contract within the budget and time periods provided under the contract. The monitoring shall include oversight as to whether the contract is being performed in compliance with the terms of the contract, this act, and federal and state law procurement law. The chief executive officer or other authorized employee of an authority shall not sign or execute a contract until the contract is approved by the board. A board for an authority shall establish policies to ensure that the authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense incident to the application for or performance of a contract or subcontract with a governmental entity in this state. A board for an authority shall establish policies to ensure that the authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes, or similar laws. As used in this subsection, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(9) A board may employ personnel as the board considers necessary to assist the board in performing the power, duties, and jurisdictions of the authority, including, but not limited to, employment of a chief executive officer as authorized under section 13.

(10) A board shall establish policies to assure that the board and the authority shall not do either of the following:

(a) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment, or a contract with the authority because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job, position, or contract.

(b) Limit, segregate, or classify an employee, a contractor, or applicant for employment or a contract in a way that deprives or tends to deprive the employee, contractor, or applicant of an employment opportunity or otherwise adversely affects the status of an employee, contractor, or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

141.1363 Chief executive officer; appointment; compensation; duties; responsibilities; service; powers; bond; certain conduct prohibited.

Sec. 13. (1) A board may appoint and fix the compensation of a chief executive officer for the authority. If the board appoints a chief executive officer, the board shall prescribe the duties and responsibilities of the chief executive officer in addition to any duties and

responsibilities imposed upon the chief executive officer under this act. A chief executive officer of an authority shall serve at the pleasure of the board.

(2) A chief executive officer shall supervise, and be responsible for, the day-to-day operation of the authority, including the control, supervision, management, and oversight of convention facilities, the issuance of bonds and notes approved by the board, the negotiation and establishment of compensation and other terms and conditions of employment for any employees of the authority, the negotiation, supervision, and enforcement of contracts entered into by the authority and approved by the board, and the supervision of contractors of the authority in their performance of their duties. A board may delegate to the chief executive officer of an authority the power and responsibility to execute and deliver, and sign for, contracts, leases, obligations, and other instruments as have been approved by the board.

(3) A chief executive officer of an authority shall have all powers as are incident to the performance of his or her duties that are prescribed by this act or by the board. All actions of the chief executive officer of an authority shall be in conformance with the policies of the board and in compliance with applicable law.

(4) A board shall require the chief executive officer of an authority and any treasurer or chief financial officer of the authority to post a suitable bond of not less than $50,000.00 issued by a responsible bonding entity, with the cost of the premium of the bond paid by the authority.

(5) All actions of the chief executive officer of an authority shall be in conformance with policies adopted by the board and in compliance with applicable law.

(6) The board of an authority shall not authorize the chief executive officer of the authority to do any of the following:

(a) Appoint a successor to the chief executive officer.

(b) Approve of a contract or a contract amendment.

(c) Appoint or hire legal counsel for the board.

(d) Prescribe ethical standards for the board or authority employees.

141.1365 Board member or officer, appointee, or employee of authority; discharge of duties; nonpartisan; reliance on certain opinions, reports, or statements; adoption of bylaws; personal liability; insurance; conflicts of interest; ethics manual; removal of board member from office; filing financial disclosure statement; rules; interest in or employment by entity after termination of board membership or employment.

Sec. 15. (1) A board member or an officer, employee, or agent of an authority shall discharge the duties of his or her position in a nonpartisan manner, in good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a board member or an officer, employee, or agent of an authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected by the board.

(c) Financial statements of the authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the authority having charge of its books of account or stated in a written report by the state auditor general or a certified public accountant, or a firm of certified accountants, to reflect the financial condition of the authority.

(2) A board shall organize and make its own policies and procedures and shall adopt bylaws not inconsistent with this act governing its operations. The board shall meet at the call of the chairperson and as may be provided in the bylaws.

(3) A member of a board or an officer, appointee, or employee of an authority shall not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the authority, and the board may indemnify a member of the board or an officer, appointee, or employee of the authority against liability arising out of the discharge of his or her official duties. An authority may indemnify and procure insurance indemnifying members of the board and other officers and employees of the authority from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the authority. The authority also may purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a member of the board or an officer or employee of the authority, whether or not the authority would have the power to indemnify the person against that liability under this section. An authority, pursuant to bylaw, contract, agreement, or resolution of its board, may obligate itself in advance to indemnify persons.

(4) Board members and officers and employees of an authority are public servants subject to 1968 PA 317, MCL 15.321 to 15.330, and are subject to any other applicable law with respect to conflicts of interest. A board shall establish policies and procedures requiring periodic disclosure of relationships which may give rise to conflicts of interest. The board shall require that a board member or chief executive officer of the authority with a direct interest in any matter before the authority disclose the board member's or officer's interest and any reasons reasonably known to the board member or officer why the transaction may not be in the best interest of the public or the authority before the board takes any action with respect to the matter. The disclosure shall become part of the record of an authority's proceedings.

(5) An authority shall establish an ethics manual governing the conducting of authority business and the conduct of authority officers and employees. An authority shall establish policies that are no less stringent than those provided for public officers and employees by 1973 PA 196, MCL 15.341 to 15.348, and coordinate efforts for the authority to preclude the opportunity for and the occurrence of transactions by the authority that would create a conflict of interest involving board members and officers or employees of the authority. At a minimum, the policies shall include compliance by each board member and officer or employees who regularly exercises significant discretion over the award and management of authority procurements with policies governing all of the following:

(a) Immediate disclosure of the existence and nature of any financial interest that could reasonably be expected to create a conflict of interest.

(b) Withdrawal by an employee, officer, or board member from participation in or discussion or evaluation of any recommendation or decision involving an authority procurement that would reasonably be expected to create a conflict of interest for that employee or member.

(c) Annual public financial disclosure of significant financial interests as provided under this act.

(6) The appointing authority of a board member may remove the board member from office for gross neglect of duty, corrupt conduct in office, or any other misfeasance or malfeasance in office.

(7) Each member of the board of an authority, the chief executive officer, and each key employee as determined by the board shall file with the secretary of state a financial disclosure statement listing assets and liabilities, property and business interests, and sources of income of the member, chief executive officer, and each key employee and any of their spouses in a form determined by the secretary of state. The financial disclosure statement shall be under oath and shall be filed at the time of appointment or employment and annually thereafter. The secretary of state may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the implementation of this subsection.

(8) A member of the board of an authority or employee of an authority shall not hold any direct or indirect interest in, be employed by, or enter into a contract for services with any entity doing business with the authority for a period of 2 years after the date his or her membership on the board terminates or his or her employment with the authority terminates.

141.1367 Authority; powers and duties; levy of tax.

Sec. 17. (1) Except as otherwise provided in this act, an authority may do all things necessary or convenient to implement the purposes, objectives, and provisions of this act and the purposes, objectives, and jurisdictions vested in the authority or the board by this act or other law, including, but not limited to, all of the following:

(a) Adopt and use a corporate seal.

(b) Adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(c) Sue and be sued in its own name and plead and be impleaded.

(d) Borrow money and issue bonds and notes according to the provisions of this act.

(e) Make and enter into contracts, agreements, or instruments necessary, incidental, or convenient to the performance of its duties and execution of its powers, duties, and jurisdictions under this act with any federal, state, local, or intergovernmental governmental agency or with any other person or entity, public or private, upon terms and conditions acceptable to the authority.

(f) Engage in collective negotiation or collective bargaining and enter into agreements with a bargaining representative as provided by 1947 PA 336, MCL 423.201 to 423.217.

(g) Solicit, receive, and accept gifts, grants, labor, loans, contributions of money, property, or other things of value, and other aid or payment from any federal, state, local, or intergovernmental government agency or from any other person or entity, public or private, upon terms and conditions acceptable to the authority, or participate in any other way in a federal, state, local, or intergovernmental government program.

(h) Make application for and receive loans, grants, guarantees, or other financial assistance in aid of a convention facility from any state, federal, local, or intergovernmental government or agency or from any other source, public or private, including, but not limited to, financial assistance for purposes of developing, planning, constructing, improving, and operating a convention facility.

(i) Procure insurance or become a self-funded insurer against loss in connection with the property, assets, or activities of the authority.

(j) Indemnify and procure insurance indemnifying board members from personal loss or accountability for liability asserted by a person with regard to bonds or other obligations of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or other obligations or by reason of any other action taken or the failure to act by the authority.

(k) Invest money of the authority, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for authority money. Investments shall be made consistent with an investment policy adopted by the board that complies with this act and 1943 PA 20, MCL 129.91 to 129.96.

(*l*) Contract for goods and services as necessary and as provided under this act. An authority may contract with a management firm, either corporate or otherwise, to operate a qualified convention facility, under the supervision of the authority.

(m) Employ legal and technical experts, other officers, agents, employees, or other personnel, permanent or temporary, as considered necessary by the board as provided under this act.

(n) Contract for the services of persons or entities for rendering professional or technical assistance, including, but not limited to, consultants, managers, legal counsel, engineers, accountants, and auditors, as provided under this act.

(o) Establish and maintain an office.

(p) Acquire by gift, devise, transfer, exchange, purchase, lease, or otherwise on terms and conditions and in a manner the authority considers proper property or rights or interests in property. Property or rights or interests in property acquired by an authority may be by purchase contract, lease purchase, agreement, installment sales contract, land contract, or otherwise. The acquisition of any property by an authority for a convention facility in furtherance of the purposes of the authority is for a public use, and the exercise of any other powers granted to the authority is declared to be public, governmental, and municipal functions, purposes, and uses exercised for a public purpose and matters of public necessity.

(q) Hold, clear, remediate, improve, maintain, manage, protect, control, sell, exchange, lease, or grant easements and licenses on property or rights or interests in property that the authority acquires, holds, or controls.

(r) Except as provided in section 19(13), convey, sell, transfer, exchange, lease, or otherwise dispose of property or rights or interest in property, excluding the sale or transfer of a qualified convention facility, to any person or entity on terms and conditions, and in a manner and for consideration the authority considers proper, fair, and valuable.

(s) Develop a convention facility.

(t) Assume and perform the obligations and covenants of a local government related to a qualified convention facility.

(u) Enter into contracts or other arrangements with persons or entities, for granting the privilege of naming or placing advertising on or in all or any portion of a convention facility.

(v) Receive financial or other assistance from a person licensed under section 6 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.206.

(w) Establish and fix a schedule of rents, admission fees, or other charges for occupancy, use of, or admission to any convention facility operated by the authority and provide for the collection and enforcement of those rents, admission fees, or other charges.

(x) Adopt reasonable rules and regulations for the orderly, safe, efficient, and sanitary operation and use of a convention facility owned by the authority or under its operational jurisdiction.

(y) Do all other acts and things necessary or convenient to exercise the powers, duties, and jurisdictions of the authority under this act or other laws that related to the purposes, powers, duties, and jurisdictions of the authority.

(2) Notwithstanding any other provision of law to the contrary, an authority shall not have the power to impose or levy a tax.

141.1369 Transfer of qualified convention facility to authority; resolution disapproving transfer; actions to occur on transfer date; duties and obligations of authority; certain contracts, agreements, conveyances, rights, obligations, or liabilities as voidable; cancellation or termination of agreement to which local government is party; reversion.

Sec. 19. (1) Within 45 days of the effective date of this act or the date on which a metropolitan area becomes a qualified metropolitan area and prior to a transfer date, the legislative body of the qualified city in which a qualified convention facility is located may disapprove the transfer of the qualified convention facility to the authority by adopting a resolution disapproving the transfer. If the transfer is not disapproved, the qualified convention facility is transferred to the authority on the ninetieth day after the effective date of this act or the date on which a convention facility becomes a qualified convention facility. All of the following shall occur on a transfer date:

(a) All right, title, and interest of a local government in and to a qualified convention facility located in a qualified metropolitan area shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area, and the authority shall receive, succeed to, and assume the exclusive right, responsibility, and authority to own, occupy, operate, control, develop, and use the qualified convention facility from and after the transfer date, including, but not limited to, all real property, buildings, improvements, structures, easements, rights of access, and all other privileges and appurtenances pertaining to the qualified convention facility, subject only to those restrictions imposed by this act.

(b) All right, title, and interest in and to the fixtures, equipment, materials, furnishings, and other personal property of a local government owned or controlled and used for purposes of the qualified convention facility by the local government shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area, and the authority shall receive, succeed to, and assume the exclusive right, responsibility, and authority to possess and control the property from and after the transfer date.

(c) All licenses, permits, approvals, or awards of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area and be assumed by the authority.

(d) All grant agreements, grant preapplications, grant applications, rights to receive the balance of any funds payable under the agreements or applications, the right to receive any amounts payable from and after the transfer date, and the benefits of contracts or agreements of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area and be assumed by the authority.

(e) All of the duties, liabilities, responsibilities, and obligations of a local government related to the ownership, occupancy, operation, control, development, or use of a qualified convention facility by the local government shall by operation of this act be conveyed and transferred from the local government to the authority for the qualified metropolitan area and assumed by the authority, except for any liabilities, responsibilities, or obligations that are contested in good faith by, or, as of the transfer date, unknown to, the authority or as otherwise provided in this act.

(f) An authority for a qualified metropolitan area shall assume all of the outstanding securities of the local government that are special limited obligations payable from and

secured by a lien on distributions received under the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, and were originally issued to finance the acquisition or construction of, development of, or improvements to the qualified convention facility conveyed and transferred to the authority for the qualified metropolitan area under this section, and the authority may refund or defease the securities. If the authority refunds the outstanding securities assumed under this subsection, that refunding shall be considered, as a matter of law, to be necessary to eliminate requirements of covenants applicable to the existing outstanding securities.

(2) An authority shall assume, accept, or become liable for lawful agreements, obligations, promises, covenants, commitments, and other requirements of a local government relating to operating a qualified convention facility conveyed and transferred under this section, except as provided in subsection (4). An authority shall perform all of the duties and obligations and shall be entitled to all of the rights of a local government and under any agreements expressly assumed and accepted by the authority related to the transfer of a qualified convention facility from the local government to the authority under this section.

(3) The local chief executive officer of a local government from which the rights, responsibility, and authority to own, occupy, operate, control, develop, and use a qualified convention facility are conveyed and transferred from the local government to an authority for a qualified metropolitan area under this section shall execute the instruments of conveyance, assignment, and transfer or other documents as may, in the authority's and the officer's reasonable judgment, as necessary or appropriate to recognize, facilitate, or accomplish the transfer of the qualified convention facility from the local government to the authority under this section.

(4) An authority for a qualified metropolitan area shall not assume any unfunded obligations of a local government transferring a qualified convention facility under this section to provide pensions or retiree health insurance. Upon request by the authority, the local government shall provide the authority with a statement of the amount of the unfunded obligations, determined by a professional actuary acceptable to the authority.

(5) All lawful actions, commitments, and proceedings of a local government made, given, or undertaken before the transfer date and assumed by an authority under this section are ratified, confirmed, and validated upon assumption. All actions, commitments, or proceedings of the local government relating to a qualified convention facility in the process of being undertaken by, but not yet a commitment or obligation of, the local government regarding the qualified convention facility may, from and after the date of assumption by the authority under this section, be undertaken and completed by the authority in the manner and at the times provided in this act or other applicable law and in any lawful agreements made by the local government before the date of assumption by the authority under this section.

(6) The exclusive right and authorization to own, occupy, operate, control, develop, and use a qualified convention facility transferred under this section shall include, but not be limited to:

(a) Ownership and operational jurisdiction over all real property of the qualified convention facility, subject to any liens of record and legal restrictions and limitations on the use of the property.

(b) The local government's right, title, and interest in, and all of the local government's responsibilities arising under, operating leases and concessions relating to a qualified convention facility.

(7) The transfers described under this section shall include, but need not be limited to, all of the following:

(a) All contracts with licensees, franchisees, tenants, concessionaires, and leaseholders.

(b) All operating financial obligations secured by revenues and fees generated from the operations of the qualified convention facility.

(c) All cash balances and investments relating to or resulting from operations of the qualified convention facility, all funds held under an ordinance, resolution, or indenture related to or securing obligations of the local government assumed by the authority, and all of the accounts receivable or choses in action arising from operations of the qualified convention facility. Fund transfers under this subdivision are limited to funds received after the transfer date and funds necessary to pay obligations related to the operation of the qualified convention facility accrued before the transfer date and not paid by the local government.

(d) All office equipment, including, but not limited to, computers, records and files, software, and software licenses required for financial management, personnel management, accounting and inventory systems, and general administration.

(8) The transfer of the real and personal property and operational jurisdiction over a qualified convention facility to an authority may not in any way impair any contracts with licensees, franchisees, vendors, tenants, bondholders, or other parties in privity with the local government that owned a qualified convention facility transferred to an authority under this section, if the contracts were not entered into or modified in violation of this act.

(9) From and after the transfer date, a local government from which a qualified convention facility has been transferred shall be relieved from all further costs, responsibility, and liability arising from, or associated with, control, operation, development, and maintenance of the qualified convention facility. The local government shall continue to be responsible for all costs associated with local municipal services, including, but not limited to, police, fire, and emergency medical services, without any additional compensation from the authority. The authority shall provide for the payment of compensation not exceeding $20,000,000.00 to the qualified city for any revenue otherwise payable to the qualified city from parking facilities operated by the qualified city at the qualified convention facility and for other costs incurred by the qualified city associated with the transfer of the qualified convention facility to the authority under this section.

(10) A local government that owns a qualified convention facility subject to transfer under this section or that owned a qualified convention facility transferred to an authority under this section shall comply with all of the following, before and after the transfer:

(a) Refrain from any action to sell, transfer, or otherwise dispose of a qualified convention facility other than to the authority or incur new or expanded obligations related to qualified convention facility, without the consent of the authority.

(b) Refrain from any approval of or material modification to any collective bargaining agreement applicable to local government employees employed at or assigned to the qualified convention facility or to terms of employment for employees at or assigned to the qualified convention facility. Any approval or modification subject to this subsection shall be null and void.

(c) Refrain from any action that, in the authority's judgment, would impair the authority's exercise of the powers granted to the authority under this act or that would impair the efficient operation and management of the qualified convention facility by the authority.

(d) Take all actions reasonably necessary to cure any defects in title to the qualified convention facility and related property transferred under this section, including, but not limited to, providing documents, records, and proceedings in respect of title.

(e) At the request of an authority, grant any license, easement, or right-of-way in connection with the qualified convention facility to the extent the authority has not been empowered to take these actions.

(f) Upon creation, an authority for the qualified metropolitan area in which the local government is located and before the transfer date may conduct operations, maintenance, and repair of the convention facility in the ordinary and usual course of business.

(11) Any contract, agreement, lease, sale, disposition, transfer, or other conveyance, easement, license, right, obligation, debt, or liability assumed, approved, entered into, amended, or modified in violation of this section shall be voidable as a matter of law to the extent that the authority would otherwise assume, become party to or transferee of, or otherwise be obligated under the contract, agreement, lease, sale, disposition, transfer, conveyance, easement, license, right, obligation, debt, or liability.

(12) Unless otherwise provided in this act, the local chief executive officer of a local government that owns a qualified convention facility subject to transfer under this section is authorized and shall take all reasonable steps to cancel or terminate any agreement to which the local government is a party that relates to the qualified convention facility and meets all the following criteria:

(a) The agreement relates to the qualified convention facility and the authority has not expressly assumed or accepted the agreement under subsection (2).

(b) The agreement provides for cancellation or termination.

(c) In the absence of cancellation or termination, the authority would become a party to the agreement by succession, assignment, operation of law, or any other involuntary means.

(13) If real property transferred from a qualified city to an authority under this section is no longer used by the authority for the purpose of maintaining or operating a convention facility as determined by a vote of the board, all right, title, and interest of the authority in the real property shall revert from the authority to the qualified city with the consent of the qualified city and upon payment by the qualified city to the authority of an amount equal to the compensation paid to the qualified city under section 19(9).

141.1371 Transfer of employees to authority; reassignment of employees within local government; representation; rights and benefits; effect of transfer on pension benefits or credits.

Sec. 21. (1) The authority, as of the transfer date, immediately shall assume and be bound by any existing collective bargaining agreements applicable to employees of the local government whose employment is transferred to the authority either as a result of the authority's express assumption of the employees or by application of section 19 for the remainder of the term of the collective bargaining agreement. Local government employees whose employment is not transferred to the authority shall be reassigned within the local government, pursuant to the terms of any applicable collective bargaining agreements. A representative of the employees or a group of employees in the local government who represents or is entitled to represent the employees or a group of employees of the local government pursuant to 1947 PA 336, MCL 423.201 to 423.217, shall continue to represent the employee or group of employees after the employees transfer to the authority. This subsection does not limit the rights of employees, pursuant to applicable law, to assert that a bargaining representative protected by this subsection is no longer their representative. The rights and benefits protected by this subsection may be altered by a future collective bargaining agreement or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the authority.

(2) Transferred employees shall not by reason of the transfer have their accrued local government pension benefits or credits diminished. If a transferring employee is not vested in his or her local government pension rights at the time of transfer, his or her posttransfer service with the authority shall be credited toward vesting in any local government retirement system in which the transferring employee participated prior to the transfer, but

posttransfer service with the authority shall not be credited for any other purpose under the local government's retirement system, except as provided in subsection (4).

(3) A transferred local government employee described in this section or a person hired by the authority as a new employee after the transfer date may remain or become a participant in the local government retirement system until the authority has established its own retirement system or pension plan. During the period the employee remains or is a participant in the local government system, the employee's posttransfer service with the authority and his or her posttransfer compensation from the authority shall be counted in determining both eligibility for and the amount of pension benefits that the employee will be eligible to receive from the local government system or plan.

(4) If the local government maintains a retirement system that provides for continuing participation and benefit accrual by local government employees who transfer their employment to another entity in conjunction with transfer of a local government function to that entity, then the transferred employee may elect to remain a participant in the local government retirement system in lieu of participation in any retirement system or pension plan of the authority. If the transferred employee elects to remain a participant in the local government system, the employee's posttransfer service with the authority and his or her posttransfer compensation from the authority shall be counted in determining both eligibility for and the amount of pension benefits that the employee will be eligible to receive from the local government system or plan. Any election to remain in a local government system or plan shall be made within 60 days following the date the authority has established its own retirement system or pension plan and shall be irrevocable. Employees eligible to make the election described in this subsection shall be those employees who immediately before their transfer date were participating in the local government system and who agree to make any employee contributions required for continuing participation in the local government system and also agree to meet all requirements and be subject to all conditions that, from time to time, apply to employees of the local government who participate in the local government system.

(5) For each employee meeting the requirements of subsection (4) who elects to remain a participant in the local government retirement system, the authority shall, on a timely basis, contribute, as applicable, to the trustees of that retirement system an amount determined by the local government system's actuary to be sufficient to fund the liability for all of that employee's retirement and other postemployment benefits under the system on a current basis, as those liabilities are accrued from and after the transfer date.

141.1373 Revenue sources; establishment of regional convention facility operating trust fund; expenditures; limitation; financial obligation.

Sec. 23. (1) Except as provided in subsection (3), an authority may raise revenues to fund all of its activities, operations, and investments consistent with its purposes. The sources of revenue available to the authority may include, but are not limited to, any of the following:

(a) Rents, admission fees, or other charges for use of a convention facility which the authority may fix, regulate, and collect.

(b) Federal, state, or local government grants, loans, appropriations, payments, or contributions.

(c) The proceeds from the sale, exchange, mortgage, lease, or other disposition of property that the authority has acquired.

(d) Grants, loans, appropriations, payments, proceeds from repayments of loans made by the authority, or contributions from public or private sources.

(e) Distributions from the convention facility development fund of the state pursuant to the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640.