(d) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(e) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395hhh.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 124]

(SB 716)

AN ACT to amend 2004 PA 47, entitled "An act to provide for and to regulate access to and disclosure of medical records; to prescribe powers and duties of certain state agencies and departments; to establish fees; to prescribe administrative sanctions; and to provide remedies," by amending section 3 (MCL 333.26263).

The People of the State of Michigan enact:

333.26263 Definitions.

Sec. 3. As used in this act:

(a) "Authorized representative" means any of the following:

(*i*) A person empowered by the patient by explicit written authorization to act on the patient's behalf to access, disclose, or consent to the disclosure of the patient's medical record, in accordance with this act.

(*ii*) If the patient is deceased, any of the following:

(A) His or her personal representative.

(B) His or her heirs at law including, but not limited to, his or her spouse.

(C) The beneficiary of the patient's life insurance policy, to the extent provided by section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(*iii*) For the purpose of obtaining a copy of an autopsy report regarding a deceased patient, any of the following:

(A) The deceased patient's heirs at law including, but not limited to, the deceased patient's spouse.

(B) The deceased patient's personal representative.

(C) The beneficiary of the deceased patient's life insurance policy, to the extent provided by section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(c) "Guardian" means an individual who is appointed under section 5306 of the estates and protected individuals code, 1998 PA 386, MCL 700.5306, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his

or her health care. Guardian includes an individual who is appointed as the guardian of a minor under section 5202 or 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5202 and 700.5204, or under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his or her health care.

(d) "Health care" means any care, service, or procedure provided by a health care provider or health facility to diagnose, treat, or maintain a patient's physical condition, or that affects the structure or a function of the human body.

(e) "Health care provider" means a person who is licensed or registered or otherwise authorized under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide health care in the ordinary course of business or practice of a health profession. Health care provider does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices or a psychiatrist, psychologist, social worker, or professional counselor who provides only mental health services.

(f) "Health facility" means a health facility or agency licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or any other organized entity where a health care provider provides health care to patients.

(g) "Maintain", as related to medical records, means to hold, possess, preserve, retain, store, or control medical records.

(h) "Medicaid" means that term as defined in section 2701 of the public health code, 1978 PA 368, MCL 333.2701.

(i) "Medical record" means information oral or recorded in any form or medium that pertains to a patient's health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a health care provider or health facility in the process of caring for the patient's health.

(j) "Medical records company" means a person who stores, locates, or copies medical records for a health care provider or health facility under a contract or agreement with that health care provider or health facility and charges a fee for providing medical records to a patient or his or her authorized representative for that health care provider or health facility.

(k) "Medically indigent individual" means that term as defined in section 106 of the social welfare act, 1939 PA 280, MCL 400.106.

(*l*) "Medicare" means that term as defined in section 2701 of the public health code, 1978 PA 368, MCL 333.2701.

(m) "Minor" means an individual who is less than 18 years of age, but does not include an individual who is emancipated under section 4 of 1968 PA 293, MCL 722.4.

(n) "Patient" means an individual who receives or has received health care from a health care provider or health facility. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this act with respect to those medical records relating to that care.

(o) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(p) "Personal representative" means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.

(q) "Third party payer" means a public or private health care payment or benefits program including, but not limited to, all of the following:

(*i*) A health insurer.

(*ii*) A nonprofit health care corporation.

(*iii*) A health maintenance organization.

(*iv*) A preferred provider organization.

(*v*) A nonprofit dental care corporation.

(*vi*) Medicaid or medicare.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 125]

(HB 4433)

AN ACT to amend 1973 PA 186, entitled "An act to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards," by amending sections 3, 31, 32, 35a, and 52 (MCL 205.703, 205.731, 205.732, 205.735a, and 205.752), section 3 as amended by 1992 PA 172 and section 35a as added by 2006 PA 174, and by adding section 47.

The People of the State of Michigan enact:

205.703 Definitions.

Sec. 3. As used in this act:

(a) "Agency" means a board, official, or administrative agency empowered to make a decision, finding, ruling, assessment, determination, or order that is subject to review under the jurisdiction of the tribunal or that has collected a tax for which a refund is claimed.

(b) "Chairperson" means the chairperson of the tribunal.

(c) "Mediation" means a voluntary process in which a mediator facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement.

(d) "Mediator" means a neutral third party who is certified by the tribunal under section 47 as a mediator in a proceeding before the tribunal or as a facilitator in the court of claims, and who is agreed to by the parties.

(e) "Proceeding" means an appeal taken under this act.

(f) "Property tax laws" does not include the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(g) "Tribunal" means the tax tribunal created under section 21.

205.731 Tax tribunal; jurisdiction.

Sec. 31. The tribunal has exclusive and original jurisdiction over all of the following:

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.

(b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.

(c) Mediation of a proceeding described in subdivision (a) or (b) before the tribunal.

(d) Certification of a mediator in a tax dispute described in subdivision (c).

(e) Any other proceeding provided by law.

205.732 Tax tribunal; powers.

Sec. 32. The tribunal's powers include, but are not limited to, all of the following:

(a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.

(b) Ordering the payment or refund of taxes in a matter over which it may acquire jurisdiction.

(c) Granting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction.

(d) Promulgating rules for the implementation of this act, including rules for practice and procedure before the tribunal and for mediation as provided in section 47, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(e) Mediating a proceeding before the tribunal.

(f) Certifying mediators to facilitate claims in the court of claims and in the tribunal.

205.735a Applicability after December 31, 2006; de novo proceedings; jurisdiction in assessment disputes; filing of petition; amendment of petition or answer; representation; "designated delivery service" defined.

Sec. 35a. (1) The provisions of this section apply to a proceeding before the tribunal that is commenced after December 31, 2006.

(2) A proceeding before the tribunal is original and independent and is considered de novo.

(3) Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6).

(4) In the 2007 tax year and each tax year after 2007, all of the following apply:

(a) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, or developmental real property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6).

(b) For an assessment dispute as to the valuation or exemption of property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial personal property, industrial personal property, or utility personal property, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6), if a statement of assessable property is filed under section 19 of the general property tax act, 1893 PA 206, MCL 211.19, prior to the commencement of the board of review for the tax year involved.

(c) For an assessment dispute as to the valuation of property that is subject to taxation under 1974 PA 198, MCL 207.551 to 207.572, the commercial redevelopment act, 1978 PA 255, MCL 207.651 to 207.668, the enterprise zone act, 1985 PA 224, MCL 125.2101 to 125.2123, the technology park development act, 1984 PA 385, MCL 207.701 to 207.718, the obsolete

property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797, the commercial rehabilitation act, 2005 PA 210, MCL 207.841 to 207.856, or 1953 PA 189, MCL 211.181 to 211.182, the assessment may be protested before the board of review or appealed directly to the tribunal without protest before the board of review as provided in subsection (6). This subdivision does not apply to property that is subject to the neighborhood enterprise zone act, 1992 PA 147, MCL 207.771 to 207.786.

(5) For a dispute regarding a determination of a claim of exemption of a principal residence or qualified agricultural property for a year in which the July or December board of review has authority to determine a claim of exemption for a principal residence or qualified agricultural property, the claim of exemption shall be presented to either the July or December board of review before the tribunal acquires jurisdiction of the dispute. For a special assessment dispute, the special assessment shall be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.

(6) The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property is invoked by a party in interest, as petitioner, filing a written petition on or before May 31 of the tax year involved. The jurisdiction of the tribunal in an assessment dispute as to property classified under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property is invoked by a party in interest, as petitioner, filing a written petition on or before July 31 of the tax year involved. In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination. An appeal of a contested tax bill shall be made within 60 days after mailing by the assessment district treasurer and the appeal is limited solely to correcting arithmetic errors or mistakes and is not a basis of appeal as to disputes of valuation of the property, the property's exempt status, or the property's equalized value resulting from equalization of its assessment by the county board of commissioners or the state tax commission. Service of the petition on the respondent shall be by certified mail. For an assessment dispute, service of the petition shall be mailed to the assessor of that local tax collecting unit if the respondent is the local tax collecting unit. Except for petitions filed under chapter 6, a copy of the petition shall also be sent to the secretary of the school board in the local school district in which the property is located and to the clerk of any county that may be affected.

(7) A petition is considered filed on or before the expiration of the time period provided in this section or by law if 1 or more of the following occur:

(a) The petition is postmarked by the United States postal service on or before the expiration of that time period.

(b) The petition is delivered in person on or before the expiration of that time period.

(c) The petition is given to a designated delivery service for delivery on or before the expiration of that time period and the petition is delivered by that designated delivery service or, if the petition is not delivered by that designated delivery service, the petitioner establishes that the petition was given to that designated delivery service for delivery on or before the expiration of that time period.

(8) A petition required to be filed by a day during which the offices of the tribunal are not open for business shall be filed by the next business day.

(9) A petition or answer may be amended at any time by leave of the tribunal and in compliance with its rules. If a tax was paid while the determination of the right to the tax is pending before the tribunal, the taxpayer may amend his or her petition to seek a refund of that tax.

(10) A person or legal entity may appear before the tribunal in his or her own behalf or may be represented by an attorney or by any other person.

(11) As used in this section, "designated delivery service" means a delivery service provided by a trade or business that is designated by the tribunal for purposes of this subsection. The tribunal shall issue a tribunal notice not later than December 31 in each calendar year designating not less than 1 delivery service for the immediately succeeding calendar year. The tribunal may designate a delivery service only if the tribunal determines that the delivery service meets all of the following requirements:

(a) Is available to the general public.

(b) Is at least as timely and reliable on a regular basis as the United States postal service.

(c) Records electronically to a database kept in the regular course of business or marks on the petition the date on which the petition was given to the delivery service for delivery.

(d) Any other requirement the tribunal prescribes.

205.747 Mediator; certification; application; rules; requirements; list; conflict of interest; conditions; appointment; report; use of statements at mediation conference; confidentiality; exceptions; meeting not subject to open meetings act; fee.

Sec. 47. (1) A person may apply to the tribunal to be certified as a mediator. Certification is for a period of 1 year. The application shall be in a form prescribed by the tribunal. A tribunal member or hearing officer may not be certified as a mediator.

(2) The tribunal shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that establish requirements for an applicant to be certified as a mediator. Whether an applicant meets the established requirements to be certified as a mediator shall be solely determined by the tribunal. The requirements for certification as a mediator shall include, but are not limited to, 5 years of state and local tax experience that occurred within 7 years immediately preceding submission of the application. If an applicant satisfies the requirements established by the tribunal, the tribunal shall certify that applicant as a mediator. The tribunal may charge each mediator certified by the tribunal an annual certification fee, as determined by the tribunal.

(3) The tribunal shall maintain a list of certified mediators available to conduct a mediation described in section 32. The list shall be published and shall indicate all of the following:

(a) The hourly rate charged by the mediator for his or her mediation services.

(b) The type of tax the mediator is certified to mediate.

(c) A summary of the mediator's experience and training.

(d) The forum in which the mediator is certified to practice.

(4) A mediator shall disclose to all parties any conflict of interest that may exist before agreeing to mediate a dispute.

(5) The tribunal shall mediate a proceeding in which it has exclusive and original jurisdiction under section 31 if all of the following conditions are satisfied:

(a) The parties have filed with the tribunal a stipulation that they agree to participate in mediation.

(b) The parties agree to a mediator.

(c) The tribunal issues an order designating the proceeding for mediation.

(6) The tribunal shall appoint the mediator agreed to by the parties. A mediator has no authoritative decision-making power to resolve a dispute in mediation. The mediator shall report the results of the mediation to the tribunal. If an agreement is reached in a proceeding

before the tribunal, the tribunal shall accept the agreement if it meets the tribunal's requirements.

(7) Statements made during a mediation conference, including statements made in written submissions, shall not be used and are not admissible in any other proceedings, including trial. Any statements, written submissions or materials, or communications between the parties or counsel of the parties and the mediator relating to the mediation are confidential and shall not be disclosed without the written consent of all parties and are not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except for the following:

(a) The report of the mediator. The report shall be in a form prescribed by the tribunal.

(b) Information reasonably required by tribunal personnel to administer and evaluate the mediation program under this section.

(c) Information necessary for the tribunal to resolve disputes regarding the mediator's fee.

(d) Consent judgments.

(8) A mediation conference is not a meeting of a public body for purposes of the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(9) The tribunal may charge a fee for mediation.

205.752 Tax tribunal; decisions or orders final and conclusive; copies; costs.

Sec. 52. (1) A decision or order of the tribunal is final and conclusive on all parties, unless reversed, remanded, or modified on appeal. A copy of the decision or order shall be mailed forthwith to each party or his attorney of record. Costs may be awarded in the discretion of the tribunal.

(2) The tribunal may order a rehearing upon written motion made by a party within 21 days after the entry of the decision or order. A decision or order may be amended or vacated after the rehearing.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 126]

(HB 4434)

AN ACT to amend 1973 PA 186, entitled "An act to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards," by amending sections 26, 49, and 61 (MCL 205.726, 205.749, and 205.761), sections 26 and 49 as amended by 1980 PA 437 and section 61 as amended by 1992 PA 172.

The People of the State of Michigan enact:

205.726 Appointment of hearing officers; conducting hearings; notice of hearing; proposed decision of hearing officer or referee.

Sec. 26. The tribunal may appoint 1 or more hearing officers to hold hearings. Hearings, except as otherwise provided in chapter 6, shall be conducted pursuant to chapter 4 of the

administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the hearing shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A proposed decision of a hearing officer or referee shall be considered and decided by 1 or more members of the tribunal.

205.749 Fees; Michigan tax tribunal fund; creation; deposit of fees; money remaining in fund at close of fiscal year; use.

Sec. 49. (1) The tribunal by rule shall prescribe filing fees and other fees to be paid in connection with a proceeding before the tribunal. The fees shall be paid to the clerk of the tribunal and by order of the tribunal may be taxed as costs.

(2) The residential property and small claims division of the tribunal shall not charge fees or costs on appeals of principal residence property as defined in rules promulgated by the tax tribunal.

(3) The Michigan tax tribunal fund is created in the department of labor and economic growth as a separate interest bearing fund. All fees collected pursuant to this act shall be deposited in the Michigan tax tribunal fund. The state treasurer shall direct the investment of the Michigan tax tribunal fund. Money in the Michigan tax tribunal fund shall remain in the Michigan tax tribunal fund at the close of the fiscal year and shall not revert to the general fund. Money in the Michigan tax tribunal fund shall be used solely for operation of the tribunal.

205.761 Residential property and small claims division; creation; composition; duties of hearing officers and referees; authority to contract with other persons or referees; consideration of proposed decision.

Sec. 61. (1) A residential property and small claims division of the tribunal is created and consists of 1 or more members of the tribunal appointed and serving pursuant to this act and those hearing officers and referees appointed by the tribunal who shall hear and decide proceedings before the residential property and small claims division.

(2) The tribunal may contract with qualified persons other than tribunal employees to act as referees to hear and decide proceedings before the residential property and small claims division.

(3) In matters before the residential property and small claims division, a proposed decision of a hearing officer or referee shall be considered and decided by 1 or more members of the tribunal.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 127]

(HB 4435)

AN ACT to amend 1973 PA 186, entitled "An act to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards," by amending section 22 (MCL 205.722).

The People of the State of Michigan enact:

205.722 Tax tribunal; qualifications of members; oath; requirements; prohibitions; compensation and expenses.

Sec. 22. (1) The members of the tribunal shall be citizens of the United States and residents of this state. At least 2 members shall be attorneys admitted to practice in this state who have been engaged for at least 5 years immediately preceding the appointment in active government, corporate, or private practice dealing with federal and state or local tax matters, including property taxes, or in the discharge of a judicial or quasi-judicial office. At least 1 member shall be a certified assessor holding the highest level of certification granted by the state assessors board. At least 1 member shall be a professional real estate appraiser holding a recognized certification indicating competence in the valuation of complex income producing and residential property of the type subject to property taxation, with a certification having required a review of sample appraisals and 5 years of experience as an appraiser. At least 1 member shall be a certified public accountant with 5 years of experience in state or local tax matters. Appointees who are not attorneys, certified assessors, professional real estate appraisers, or certified public accountants shall have at least 5 years of experience in state or local tax matters.

(2) Each member shall take and subscribe to the constitutional oath of office before entering on the discharge of his or her duties.

(3) Each member shall devote his or her entire time to, and personally perform the duties of, his or her office and shall not engage in other business or professional activity for remuneration.

(4) Each member shall receive an annual salary as determined by law and shall be reimbursed for his or her actual and necessary expenses at the rate determined by the administrative board.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 128]

(HB 4436)

AN ACT to amend 1973 PA 186, entitled "An act to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards," by amending section 62 (MCL 205.762), as amended by 1995 PA 232.

The People of the State of Michigan enact:

205.762 Residential property and small claims division; jurisdiction; "inflation rate" defined; election to proceed; exceptions to proposed order; modification; rehearing; location of proceeding; form for filing of residential property and small claims appeals; filing fee; "residential property" defined.

Sec. 62. (1) The residential property and small claims division created in section 61 has jurisdiction over a proceeding, otherwise cognizable by the tribunal, in which residential

property is exclusively involved. Property other than residential property may be included in a proceeding before the residential property and small claims division if the amount of that property's taxable value or state equalized valuation in dispute is not more than $100,000.00. The residential property and small claims division also has jurisdiction over a proceeding involving an appeal of any other tax over which the tribunal has jurisdiction if the amount of the tax in dispute is $20,000.00 or less, adjusted annually by the inflation rate. As used in this subsection, "inflation rate" means the ratio of the general price level for the state fiscal year ending in the calendar year immediately preceding the current year divided by the general price level for the state fiscal year ending in the calendar year before the year immediately preceding the current year.

(2) A person or legal entity entitled to proceed under section 31, and whose proceeding meets the jurisdictional requirements of subsection (1), may elect to proceed before either the residential property and small claims division or the entire tribunal. A formal record of residential property and small claims division proceedings is not required. Within 20 days after a hearing officer or referee issues a proposed order, a party may file exceptions to the proposed order. The tribunal shall review the exceptions to determine if the proposed order shall be adopted as a final order. Upon a showing of good cause or at the tribunal's discretion, the tribunal may modify the proposed order and issue a final order or hold a rehearing by a tribunal member. A rehearing is not limited to the evidence presented before the hearing officer or referee.

(3) Except as otherwise provided in this subsection, the residential property and small claims division shall meet in the county in which the property in question is located or in a county contiguous to the county in which the property in question is located. A petitioner-appellant shall not be required to travel more than 100 miles from the location of the property in question to the hearing site, except that a rehearing by a tribunal member shall be at a site determined by the tribunal. By leave of the tribunal and with the mutual consent of all parties, a residential property and small claims division proceeding may take place at a location mutually agreed upon by all parties or may take place by the use of amplified telephonic or video conferencing equipment.

(4) The tribunal shall make a short form for the simplified filing of residential property and small claims appeals.

(5) In a proceeding before the residential property and small claims division for property other than residential property, if the amount of taxable value or state equalized valuation in dispute is greater than $20,000.00, or in nonproperty matters if the amount in dispute is greater than $1,000.00, the filing fee is the amount that would have been paid if the proceeding was brought before the entire tribunal and not the residential property and small claims division.

(6) As used in this chapter, "residential property" means any of the following:

(a) Real property exempt under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc.

(b) Real property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(c) Real property with less than 4 rental units.

(d) Real property classified as agricultural real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 129]

(HB 4437)

AN ACT to amend 1973 PA 186, entitled "An act to create the tax tribunal; to provide for personnel, jurisdiction, functions, practice and procedure; to provide for appeals; and to prescribe the powers and duties of certain state agencies; and to abolish certain boards," by repealing section 66 (MCL 205.766).

The People of the State of Michigan enact:

Repeal of MCL 205.766.

Enacting section 1. Section 66 of the tax tribunal act, 1973 PA 186, MCL 205.766, is repealed.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 130]

(SB 108)

AN ACT to amend 2002 PA 48, entitled "An act to create a telecommunication rights-of-way oversight authority; to provide for fees; to prescribe the powers and duties of municipalities and certain state agencies and officials; to provide for penalties; and to repeal acts and parts of acts," by amending section 13 (MCL 484.3113).

The People of the State of Michigan enact:

484.3113 Modification of fees by municipality.

Sec. 13. (1) A municipality is not eligible to receive funds under sections 11 and 12 unless by December 31, 2007 the municipality has modified to the extent necessary any fees charged to providers after the effective date of this act relating to access to and usage of the public rights-of-way to an amount not exceeding the amounts of fees and charges required under this act.

(2) To the extent a telecommunications provider pays fees to a municipality that have not been modified as required by this section, both of the following apply:

(a) The provider may deduct the fees paid from the fee required to be paid under section 8 for those rights-of-way.

(b) The amounts received shall be deducted from the amounts the municipality is eligible to receive under sections 11 and 12.

(3) The authority may allow a municipality in violation of this section to become eligible to receive funds under sections 11 and 12 if the authority determines that the violation occurred despite good faith efforts and the municipality rebates to the authority any fees received in excess of those required under section 8, including any interest as determined by the authority.

(4) A municipality is considered to have modified the fees under subsection (1) if it has adopted a resolution or ordinance, effective no later than January 1, 2008, approving the modification so that providers with telecommunication facilities in public rights-of-way within

the municipality's boundaries pay only those fees required under section 8. The municipality shall provide each provider affected by the fee a copy of the resolution or ordinance passed under this subsection.

(5) Except as otherwise provided by a municipality, if section 8 is found to be invalid or unconstitutional, a modification of fees under this section is void from the date the modification was made.

(6) To be eligible to receive fee-sharing payments under this act, a municipality shall not hold a cable television operator in default or seek any remedy for failure to satisfy an obligation, if any, to pay after the effective date of this act a franchise fee or other similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(7) If a municipality adopts a resolution as required under this section but adopts it after the distribution of funds under sections 11 and 12 for 2007, the municipality shall be eligible to receive funds for 2007 from funds available after the 2007 distribution date.

This act is ordered to take immediate effect.
Approved May 8, 2008.
Filed with Secretary of State May 9, 2008.

[No. 131]

(HB 5695)

AN ACT to amend 1949 PA 300, entitled "An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," by amending section 720 (MCL 257.720), as amended by 2003 PA 142.

The People of the State of Michigan enact:

257.720 Construction or loading of vehicles to prevent contents from escaping; exception; closing tailgates, faucets, and taps; exemption; proof of violation; loading of vehicles not completely enclosed; prima facie liability; exceptions; front end loading device; violation; penalty; "logs" defined.

Sec. 720. (1) A person shall not drive or move a vehicle on a highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, blowing

off, or otherwise escaping from the vehicle. This requirement does not apply to a vehicle transporting agricultural or horticultural products when hay, straw, silage, or residue from a product, but not including the product itself, or when materials such as water used to preserve and handle agricultural or horticultural products while in transportation, escape from the vehicle in an amount that does not interfere with other traffic on the highway. The tailgate, faucets, and taps on a vehicle shall be securely closed to prevent spillage during transportation whether the vehicle is loaded or empty, and the vehicle shall not have any holes or cracks through which material can escape. Any highway maintenance vehicle engaged in either ice or snow removal shall be exempt from this section.

(2) Actual spillage of material on the highway or proof of that spillage is not necessary to prove a violation of this section.

(3) Except as provided in this section, a vehicle carrying a load, other than logs or tubular products, which is not completely enclosed shall meet either of the following requirements:

(a) Have the load covered with firmly secured canvas or a similar type of covering. A device used to comply with the requirement of this subdivision shall not exceed a width of 108 inches nor by design or use have the capability to carry cargo by itself.

(b) Have the load securely fastened to the body or the frame of the vehicle with binders of adequate number and of adequate breaking strength to prevent the dropping off or shifting of the load.

(4) A company or individual who loads or unloads a vehicle or causes it to be loaded or unloaded, with knowledge that it is to be driven on a public highway, in a manner so as to cause a violation of subsection (1) shall be prima facie liable for a violation of this section.

(5) Subsection (3) does not apply to a person operating a vehicle to transport agricultural commodities or to a person operating a farm truck or implement of husbandry transporting sand, gravel, and dirt necessary in the normal operation of a farm. However, a person operating a vehicle to transport agricultural commodities or sand, gravel, and dirt in the normal operation of the farm who violates subsection (1) or (4) is guilty of a misdemeanor and is subject to the penalties prescribed in subsection (9).

(6) Subsection (3)(a) does not apply to a motor vehicle transporting items of a load that because of their weight will not fall off the moving vehicle and that have their centers of gravity located at least 6 inches below the top of the enclosure nor to a motor vehicle carrying metal that because of its weight and density is so loaded as to prevent it from dropping or falling off the moving vehicle.

(7) Subsection (3)(a) does not apply to motor vehicles and other equipment engaged in work upon the surface of a highway or street in a designated work area.

(8) A person shall not drive or move on a highway a vehicle equipped with a front end loading device with a tine protruding parallel to the highway beyond the front bumper of the vehicle unless the tine is carrying a load designed to be carried by the front end loading device. This subsection does not apply to a vehicle designed to be used or being used to transport agricultural commodities, to a vehicle en route to a repair facility, or to a vehicle engaged in construction activity. As used in this subsection, "agricultural commodities" means that term as defined in section 722.

(9) A person who violates this section is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both.

(10) As used in this section, "logs" means sawlogs, pulpwood, or tree length poles.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 132]

(HB 5798)

AN ACT to amend 1939 PA 3, entitled "An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts," (MCL 460.1 to 460.10cc) by adding section 6r.

The People of the State of Michigan enact:

460.6r Definitions; steam supply cost recovery clause; filing steam supply cost recovery plan and 3-year forecast; requirements; steam supply and cost review; temporary or final order; filing detailed statement; commencement of steam supply cost reconciliation; order of refunds or credits; rate of interest; filing report with governor and legislature.

Sec. 6r. (1) As used in this section:

(a) "Booked cost of steam" includes all of the following:

(*i*) Retail gas purchases consisting of all costs for gas service including customer charges, distribution charges, and any gas cost recovery factor.

(*ii*) Wholesale gas purchases, consisting of the contract cost of gas, transportation fuel, pipeline transportation fees, and any local transportation or distribution fees.

(*iii*) Storage gas charges, including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees.

(*iv*) The cost of financial hedging instruments approved by the commission such as futures and options, including premiums, settlement gains and losses, and commodity exchange and administration fees.

(*v*) Steam purchases, consisting of all costs for steam purchased including customer charges, distribution charges, and associated transportation fees.

(*vi*) Costs for other fuel purchases including, but not limited to, any coal, wood, garbage, tires, waste oil, fuel oil or other materials used as a fuel for the production of steam, and all customer charges, distribution charges, and associated transportation and storage fees.

(b) "Steam supply cost recovery clause" means a clause in the rates or rate schedule of a utility which permits the monthly adjustment of rates for steam supply to allow the utility to recover the booked costs of fuel burned by the utility for steam generation and the booked costs of purchased steam transactions by the utility incurred under reasonable and prudent policies and practices.

(c) "Steam supply cost recovery factor" means that element of the rates to be charged for steam service to reflect steam supply costs incurred by a utility and made pursuant to a steam supply cost recovery clause incorporated in the rates or rate schedule of a utility.

(d) "Utility" means a steam distribution company regulated by the commission.

(2) Pursuant to its authority under this act, the commission may incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility. An order incorporating a steam supply cost recovery clause shall be the result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(3) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility annually shall file a complete steam supply cost recovery plan describing the expected sources of steam supply and changes in the cost of steam supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific steam supply cost recovery factor. The utility shall file the steam supply cost recovery plan at least 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and steam supply arrangements entered into by the utility for providing steam supply during the specified 12-month period including the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision of the contract or arrangement as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply in the manner described in the plan, in light of its existing sources of steam generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the steam supply cost recovery plan required by subsection (3), a 3-year forecast of the steam supply requirements of its customers, its anticipated sources of supply, and projections of steam supply costs, in light of its existing sources of steam generation and sources of steam generation under construction. The forecast shall include a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If a utility files a steam supply cost recovery plan and a 3-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a steam supply and cost review, to evaluate the reasonableness and prudence of the steam supply cost recovery plan filed by a utility pursuant to subsection (3), and establish the steam supply cost recovery factors to implement a steam supply cost recovery clause incorporated in the rates or rate schedule of the utility. The steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a steam supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the steam supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the steam supply cost recovery plan accordingly. In evaluating the decisions underlying the steam supply cost recovery plan, the commission shall consider the cost and availability of the steam generation available to the utility, the cost of short-term firm purchases available to the utility, whether the utility has taken all appropriate actions to minimize the cost of fuel, and other relevant factors. The commission shall approve, reject, or amend the 12 monthly steam supply cost recovery factors requested by the utility in its steam supply cost recovery

plan. The factors ordered shall be described in fixed dollar amounts per unit of steam, but may include specific amounts contingent on future events.

(7) In its final order in a steam supply and cost review, the commission shall evaluate the decisions underlying the 3-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 3-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or steam supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a steam supply cost recovery plan in a steam supply and cost recovery review after first having given notice to the parties to the review and giving those parties a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a steam supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amount up to the steam supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete steam supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then, pending an order which determines the steam supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the steam supply cost recovery factors requested in its plan. Any amount collected under the steam supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amount collected exceeds the total amount determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, a utility may file a revised steam supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of a revised steam supply cost recovery plan, the commission shall reopen the steam supply and cost review. In addition, the commission may reopen the steam supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a steam supply cost recovery factor has been applied to customers' bills, a utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the steam supply cost recovery factor and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility, and the cost of steam supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's steam supply cost recovery plan, the commission shall commence a proceeding, to be known as a steam supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271

to 24.287. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues, including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the steam supply cost reconciliation, the commission shall reconcile the revenues recorded pursuant to the steam supply cost recovery factors and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of steam supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted steam supply and cost review.

(13) In its order in a steam supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. The refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each customer during the period covered.

(14) In its order in a steam supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. For excess costs incurred through management actions contrary to the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of the expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for steam supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by those customers if the amounts in excess of the amounts actually recovered by the utility for cost of steam supply had been included in the steam supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines is appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a steam supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the

excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for refunds and interest on refunds shall not be charged to customers. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

(16) The commission shall file a report with the governor and legislature 5 years after the effective date of the amendatory act that added this section, and every 5 years thereafter, that shall include recommendations for any needed legislation regarding this section.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 133]

(SB 751)

AN ACT to amend 1984 PA 431, entitled "An act to prescribe the powers and duties of the department of management and budget; to define the authority and functions of its director and its organizational entities; to authorize the department to issue directives; to provide for the capital outlay program; to provide for the leasing, planning, constructing, maintaining, altering, renovating, demolishing, conveying of lands and facilities; to provide for centralized administrative services such as purchasing, payroll, record retention, data processing, and publishing and for access to certain services; to provide for a system of internal accounting and administrative control for certain principal departments; to provide for an internal auditor in certain principal departments; to provide for certain powers and duties of certain state officers and agencies; to codify, revise, consolidate, classify, and add to the powers, duties, and laws relative to budgeting, accounting, and the regulating of appropriations; to provide for the implementation of certain constitutional provisions; to create funds and accounts; to make appropriations; to prescribe remedies and penalties; to rescind certain executive reorganization orders; to prescribe penalties; and to repeal certain acts and parts of acts," by amending section 261 (MCL 18.1261), as amended by 2006 PA 622.

The People of the State of Michigan enact:

18.1261 Supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and other items; definitions.

Sec. 261. (1) The department 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 state agencies for which the legislature has not otherwise expressly provided. In all purchases made by the department, all other things being equal, preference shall be given to products manufactured or services offered by Michigan-based firms, if consistent with federal statutes. The department shall solicit competitive bids from the private sector whenever practicable to efficiently and effectively meet the state's needs. The department shall first determine that competitive solicitation of bids in the private sector is not appropriate before it shall use any other procurement method for an acquisition.

(2) The department shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts.

(3) The department 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 director or his or her designated representative.

(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 within a state agency's purchasing authority delegated under subsection (4), and the state agency has established policies or procedures approved by the department to ensure that goods or services are purchased by the state agency at fair and reasonable prices.

(4) The department may delegate its procurement authority to other state agencies within dollar limitations and for designated types of procurements. The department may withdraw delegated authority upon a finding that a state agency did not comply with departmental procurement directives.

(5) The department 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.

(6) The department shall issue directives for the procurement, receipt, inspection, and storage of supplies, materials, and equipment, and for printing and services needed by state agencies. The department shall provide standard specifications and standards of performance applicable to purchases.

(7) The department may enter into a cooperative purchasing agreement with 1 or more other states or public entities for the purchase of goods, including, but not limited to, recycled goods, and services necessary for state programs.

(8) In awarding a contract under this section, the department shall give a preference of up to 10% of the amount of the contract to a qualified disabled veteran. If the qualified disabled veteran otherwise meets the requirements of the contract solicitation and with the preference is the lowest bidder, the department shall enter into a procurement contract with the qualified disabled veteran under this act. If 2 or more qualified disabled veterans are the lowest bidders on a contract, all other things being equal, the qualified disabled veteran with the lowest bid shall be awarded the contract under this act.

(9) It is the goal of the department to award each year not less than 5% of its total expenditures for construction, goods, and services to qualified disabled veterans. The department may count toward its 5% yearly goal described in this subsection that portion of all procurement contracts in which the business entity that received the procurement contract subcontracts with a qualified disabled veteran. Each year, the department shall report to each house of the legislature on all of the following for the immediately preceding 12-month period:

(a) The number of qualified disabled veterans who submitted a bid for a state procurement contract.

(b) The number of qualified disabled veterans who entered into procurement contracts with this state and the total value of those procurement contracts.

(c) Whether the department achieved the goal described in this subsection.

(d) The recommendations described in subsection (10).

(10) Each year, the department shall review the progress of all state agencies in meeting the 5% goal with input from statewide veterans service organizations and from the business community, including businesses owned by qualified disabled veterans, and shall make recommendations to each house of the legislature regarding continuation, increases, or decreases in the percentage goal. The recommendations shall be based upon the number of businesses that are owned by qualified disabled veterans and on the continued need to encourage and promote businesses owned by qualified disabled veterans.

(11) To assist the department in reaching the goal described in subsection (9), the governor shall recommend to the legislature changes in programs to assist businesses owned by qualified disabled veterans.

(12) As used in this section:

(a) "Qualified disabled veteran" means a business entity that is 51% or more owned by 1 or more veterans with a service-connected disability.

(b) "Service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16).

(c) "Veteran" means a person who served in the army, air force, navy, marine corps, or coast guard and who was discharged or released from his or her service with an honorable or general discharge.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 134]

(SB 115)

AN ACT to amend 2003 PA 226, entitled "An act to provide for joint land use planning and the joint exercise of certain zoning powers and duties by local units of government; and to provide for the establishment, powers, and duties of joint planning commissions," by amending the title and sections 3, 5, and 7 (MCL 125.133, 125.135, and 125.137).

The People of the State of Michigan enact:

TITLE

An act to provide for joint land use planning and zoning by local units of government; and to provide for the establishment, powers, and duties of joint planning commissions and zoning boards of appeals.

125.133 Definitions.

Sec. 3. As used in this act:

(a) "Municipality" means a city, village, or township.

(b) "Participating" means, with respect to a municipality, that the municipality is a member of a joint planning commission.

(c) "Registered elector of the municipality" means a registered elector residing in the municipality or, if the municipality is a township, a registered elector residing in the portion of the township outside the limits of any village.

125.135 Joint planning commission; approval of agreement to establish; specifications; phased transfer.

Sec. 5. (1) Subject to section 9, the legislative bodies of 2 or more municipalities may each adopt an ordinance approving an agreement establishing a joint planning commission. The agreement shall specify at least all of the following:

(a) The composition of the joint planning commission, including any alternate members.

(b) The qualifications, the selection by election or appointment, and the terms of office of members of the joint planning commission.

(c) Conditions and procedures for removal from office of members of the joint planning commission and for filling vacancies in the joint planning commission.

(d) How the operating budget of the joint planning commission will be shared by the participating municipalities.

(e) The jurisdictional area of the joint planning commission, which may consist of all or part of the combined territory of the participating municipalities.

(f) Procedures by which a municipality may join or withdraw from the joint planning commission.

(g) For situations in which the powers, duties, or procedures of a planning commission under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885, depend on whether the municipality is (*i*) a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, (*ii*) a township that did not on September 1, 2008, have a planning commission created under former 1931 PA 285, or (*iii*) a city or village—a designation of which of these 3 categories of municipalities' powers, duties, and procedures will be applicable to the joint planning commission. A category of municipality shall not be designated under this subdivision unless at least 1 of the participating municipalities falls within that category.

(h) For situations in which the powers, duties, or procedures under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, applicable to a planning commission depend on whether the municipality is a township or is a city or village, a designation either that the powers, duties, and procedures applicable to a township will be followed by the joint planning commission or that the powers, duties, and procedures applicable to a city or village will be followed by the joint planning commission. Powers, duties, and procedures applicable to a township shall not be designated unless at least 1 of the participating municipalities is a township. Powers, duties, and procedures applicable to a city or village shall not be designated unless at least 1 of the participating municipalities is a city or village.

(i) Any additional provision concerning the powers or duties of a zoning board or zoning commission that the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, authorizes to be set forth in a zoning ordinance and that is agreed to by the participating municipalities.

(j) The effective date of the agreement.

(2) The agreement may provide for the phased transfer to the joint planning commission of the powers and duties of existing planning commissions or zoning boards or zoning commissions under section 7.

125.137 Transfer of powers and duties.

Sec. 7. (1) Subject to section 5(1)(g) and (2), all the powers and duties of a planning commission under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885, are, with respect to the jurisdictional area of the joint planning commission, transferred to the joint planning commission.

(2) Subject to section 5(2), all the powers and duties of a zoning board or zoning commission under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, are, with respect to the jurisdictional area of the joint planning commission, transferred to the joint planning commission. In exercising such powers or performing such duties, the joint planning commission shall follow the procedure specified pursuant to section 5(h), when relevant.

(3) If only part of the territory of a participating municipality is in the jurisdictional area of a joint planning commission, the participating municipality, with the joint planning commission acting as the zoning board or zoning commission, may adopt a zoning ordinance that affects only that portion of its territory in the jurisdictional area of the joint planning commission.

(4) The participating municipalities, with the joint planning commission acting as the zoning commission, may each adopt a joint zoning ordinance that affects the jurisdictional area of the joint planning commission and provides for the joint administration of the joint zoning ordinance, including, but not limited to, a joint zoning board of appeals.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 135]

(HB 5894)

AN ACT to amend 1979 PA 218, entitled "An act to provide for the licensing and regulation of adult foster care facilities; to provide for the establishment of standards of care for adult foster care facilities; to prescribe powers and duties of the department of social services and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts," by amending section 34b (MCL 400.734b), as added by 2006 PA 29.

The People of the State of Michigan enact:

400.734b Employing or contracting with certain employees providing direct services to residents; prohibitions; criminal history check; exemptions; written consent and identification; conditional employment; use of criminal history record information; disclosure; failure to conduct criminal history check; automated fingerprint identification system database; report to legislature; costs; definitions.

Sec. 34b. (1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility after April 1, 2006 if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract:

(*i*) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(*ii*) A felony involving cruelty or torture.

(*iii*) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iv*) A felony involving criminal sexual conduct.

(*v*) A felony involving abuse or neglect.

(*vi*) A felony involving the use of a firearm or dangerous weapon.

(*vii*) A felony involving the diversion or adulteration of a prescription drug or other medications.

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract.

(d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(*ii*) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(*iii*) A misdemeanor involving criminal sexual conduct.

(*iv*) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).

(*v*) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(*ii*) A misdemeanor involving home invasion.

(*iii*) A misdemeanor involving embezzlement.

(*iv*) A misdemeanor involving negligent homicide.

(*v*) A misdemeanor involving larceny unless otherwise provided under subdivision (g).

(*vi*) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).

(*vii*) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(*ii*) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(*iii*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided under subdivision (g).

(g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or the date of the execution of the independent contract:

(*i*) A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of conviction, is under the age of 18.

(*ii*) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency according to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (6), an adult foster care facility shall not employ or independently contract with an individual who has direct access to residents after April 1, 2006 until the adult foster care facility conducts a criminal history check in compliance with subsections (4) and (5). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before April 1, 2006. Beginning April 1, 2009, an individual who is exempt under this subsection shall provide the department of state police a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subsection is not limited to working within the adult foster care facility with which he or she is employed by or under independent contract with on April 1, 2006. That individual may transfer to another adult foster care facility that is under the same ownership with which he or she was employed or under contract. If that individual wishes to transfer to an adult foster care facility that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new facility in accordance with subsection (4). If an individual who is exempt under this subsection is subsequently convicted of a crime or offense described under subsection (1)(a) to (g) or found to be the subject of a substantiated finding described under

subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), he or she is no longer exempt and shall be terminated from employment or denied employment.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section. The individual, at the time of initial application, shall provide identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform a check of all relevant registries established according to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. The request shall be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency. The adult foster care facility shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The adult foster care facility shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. The department of state police shall conduct an initial criminal history check on the individual named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection that contains a criminal record. The report shall contain any criminal history record information on the individual maintained by the department of state police.

(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility, the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with a set of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) and the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination, the department shall notify the adult foster care facility and the individual in writing of the type of crime disclosed on the written report of the criminal history check obtained

under subsection (4) or the federal bureau of investigation determination without disclosing the details of the crime. The notification shall inform the facility or agency and the applicant regarding the appeal process in section 34c. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under subsection (4).

(6) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:

(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.

(b) The individual signs a written statement indicating all of the following:

(*i*) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) to (g) within the applicable time period prescribed by subsection (1)(a) to (g).

(*ii*) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(*iii*) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(*iv*) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraphs (*i*) to (*iii*), his or her employment will be terminated by the adult foster care facility as required under subsection (1) unless and until the individual can prove that the information is incorrect.

(*v*) That he or she understands the conditions described in subparagraphs (*i*) to (*iv*) that result in the termination of his or her employment and that those conditions are good cause for termination.

(7) The department shall develop and distribute the model form for the statement required under subsection (6)(b). The department shall make the model form available to adult foster care facilities upon request at no charge.

(8) If an individual is conditionally employed under subsection (6), and the report described in subsection (4) or (5), if applicable, does not confirm the individual's statement under subsection (6)(b)(*i*) to (*iii*), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(9) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (6)(b)(*i*) to (*iii*) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(10) An adult foster care facility shall use criminal history record information obtained under subsection (4) or (5) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (6) and (8). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) or (5) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility

or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.

(11) As a condition of continued employment, each employee or independent contractor shall do both of the following:

(a) Agree in writing to report to the adult foster care facility immediately upon being arraigned on 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon becoming the subject of a substantiated finding described under subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(12) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of an adult foster care facility who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(13) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective adult foster care facility with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(14) If an individual independently contracts with an adult foster care facility, subsections (1) and (2) do not apply if the contractual work performed by the individual is not directly related to the clinical, health care, or personal services delivered by the adult foster care facility or if the individual's duties are not performed on an ongoing basis with direct access to residents. This exception includes, but is not limited to, an individual who independently contracts with the adult foster care facility to provide utility, maintenance, construction, or communication services.

(15) The department and the department of state police shall maintain an electronic web-based system to assist the adult foster care facilities required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to the adult foster care facilities for the individuals entered in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) The department shall submit to the legislature not later than April 1, 2009 a written report regarding the department's plan to continue performing criminal history checks if adequate federal funding is not available to continue performing future criminal history checks.

(17) An adult foster care facility or a prospective employee covered under this section may not be charged for the cost of an initial criminal history check required under this act.

(18) As used in this section:

(a) "Direct access" means access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information.

(b) "Health facility or agency" means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(c) "Independent contract" means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care facility with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the organization or agency.

(d) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 136]

(SB 1007)

AN ACT to amend 2001 PA 266, entitled "An act to regulate the production, transportation, handling, processing, delivery, and sale of grade A milk and milk products; to define grade A milk and milk products and to establish standards and requirements for grade A milk and milk products; to provide for dairy food safety; to provide for the sampling, sampling analysis, and transportation of milk and milk products; to regulate the labeling, manufacture, distribution, and sale of milk and milk products for the protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of milk and milk products; to provide for enforcement; to provide for licenses and permits and revocation of licenses and permits; to impose certain fees; to require certain security arrangements of milk plants to ensure the prompt payment of producers; to prescribe powers and duties of certain state departments and officers; to provide for uniform standards and uniform inspection; to provide for promulgation of rules; to provide for certain remedies and penalties; and to repeal acts and parts of acts," by amending sections 2, 3, 4, 5, 6, 7, 20, 30, 31, 33a, 41, 44, 50, 53, 60, 61, 62, 63, 68, and 69 (MCL 288.472, 288.473, 288.474, 288.475, 288.476, 288.477, 288.490, 288.500, 288.501, 288.503a, 288.511, 288.514, 288.520, 288.523, 288.530, 288.531, 288.532, 288.533, 288.538, and 288.539), section 33a as added by 2004 PA 277.

The People of the State of Michigan enact:

288.472 Definitions; A.

Sec. 2. As used in this act:

(a) "Adulterated" means food or milk to which any of the following apply:

(*i*) It bears or contains any poisonous or deleterious substance that may render it injurious to health except that, if the substance is not an added substance, the food or milk is

not considered adulterated if the quantity of that substance in the food or milk does not ordinarily render it injurious to health.

(*ii*) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subparagraph (*v*).

(*iii*) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subparagraph (*v*).

(*iv*) It bears or contains any food additive considered unsafe within the meaning of subparagraph (*v*) provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subparagraph (*v*) and the raw agricultural commodity has been subjected to processing the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subparagraph (*v*) and this subdivision, not be considered unsafe if that residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(*v*) Any added poisonous or deleterious substance, any food additive, and pesticide chemical in or on a raw agricultural commodity, or any color additive is considered unsafe for the purpose of application of this definition, unless there is in effect a federal regulation or exemption from regulation under the federal act, meat inspection act, poultry product inspection act, or other federal acts, or a rule adopted under this act limiting the quantity of the substance, and the use or intended use of the substance, and the use or intended use of the substance conforms to the terms prescribed by the rule.

(*vi*) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 512 of the federal act, 21 USC 360b.

(*vii*) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or it is otherwise unfit for food.

(*viii*) It has been produced, prepared, packed, or held under insanitary conditions in which it may have become contaminated with filth or in which it may have been rendered diseased, unwholesome, or injurious to health.

(*ix*) It is the product of a diseased animal or an animal that has died other than by slaughter or that has been fed uncooked garbage or uncooked offal from a slaughterhouse.

(*x*) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

(*xi*) A valuable constituent has been in whole or in part omitted or abstracted from the food; a substance has been substituted wholly or in part for the food; damage or inferiority has been concealed in any manner; or a substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(*xii*) It is confectionery and has partially or completely imbedded in it any nonnutritive object except in the case of any nonnutritive object if, as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; it bears or contains any alcohol other than alcohol not in excess of 1/2 of 1% by volume derived solely from the use of flavoring extracts; or it bears or contains any nonnutritive substance except a nonnutritive substance such as harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on confectionery

by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of the provisions of this act. For the purpose of avoiding or resolving uncertainty as to the application of this subdivision, the director may issue rules allowing or prohibiting the use of particular nonnutritive substances.

(*xiii*) It is or bears or contains any color additive that is unsafe within the meaning of subparagraph (*v*).

(*xiv*) It has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption under this act or a regulation or exemption under the federal act.

(*xv*) It is bottled water that contains a substance at a level higher than allowed under this act.

(b) "Advertise" or "advertisement" means a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or is likely to induce, directly or indirectly, the purchase of milk or milk products.

(c) "Approved laboratory" means a laboratory that is listed in the national conference of interstate milk shipments list of sanitation compliance and enforcement ratings distributed by the United States food and drug administration and as approved by the director.

(d) "Approved sample container" means a presterilized, suitable nontoxic single service container of adequate size that complies with the requirements of standard methods.

(e) "Audited financial statement" means a fiscal year end financial statement prepared by a certified public accountant according to generally accepted accounting principles.

288.473 Definitions; B to G.

Sec. 3. As used in this act:

(a) "Bulk milk hauler/sampler" means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant, receiving station, or transfer station and has in his or her possession a license or permit issued by the department to sample those products.

(b) "Bulk milk pickup tanker" means a vehicle, including truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler/sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.

(c) "Cash payments", regarding the producer security requirements of this act, means a payment in cash or by check, money order, wire transfer, or draft for a sale in which the title to farm milk is transferred.

(d) "Dairy animal" means any domesticated lactating mammal, including a cow, goat, sheep, water buffalo, or other hooved mammal, which is managed and milked to obtain milk for human consumption.

(e) "Dairy farm" means any place or premises where 1 or more dairy animals are kept for milking purposes, and from which a part or all of the milk is provided, sold, or offered for sale.

(f) "Department" means the Michigan department of agriculture.

(g) "Director" means the director of the Michigan department of agriculture or his or her designee.

(h) "Distributor" means a person other than a producer or processor who offers for sale, holds for sale, or sells at wholesale milk or milk products. A distributor's facilities include warehousing, refrigerated storage, and distribution vehicles.

(i) "Farm tank" means the farm bulk milk tank, milk tank truck, or silo used for the storage or cooling, or both, of milk prior to pickup and transport from the farm.

(j) "Federal act" means the federal food, drug, and cosmetic act, 21 USC 301 to 321, 331 to 360dd, 360hh to 376, and 378 to 399.

(k) "First receiving point" means the milk plant where the milk is first received for processing and manufacturing. First receiving point for producer security requirements does not include receiving stations and transfer stations.

(*l*) "Food law of 2000" means the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(m) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

(*i*) A motel that serves continental breakfasts only.

(*ii*) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(*iii*) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(*iv*) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

(n) "Grade A milk" means milk or milk products produced in substantial compliance with the requirements of this act.

288.474 Definitions; I to M.

Sec. 4. As used in this act:

(a) "Imminent or substantial health hazard" means a determination of the director of either or both of the following:

(*i*) A condition that exists at a dairy farm or dairy plant requiring immediate action to prevent endangering the public health or safety.

(*ii*) A milk product may be unwholesome or unsafe.

(b) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article conforming to a requirement imposed under this act that any word, statement, or other information appearing on the label appears on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.

(c) "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers or accompanying the article.

(d) "Manufacturing milk law of 2001" means the manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740.

(e) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of 1 or more healthy cows, goats, sheep, or other dairy animals.

(f) "Milk buyer" means any producer, milk producer marketing organization, milk plant, receiving station, transfer station, or bulk milk hauler that either takes delivery of raw milk or raw milk product or manages the sale of the raw milk or raw milk product, or both.

(g) "Milk plant" or "dairy plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, packaged, or prepared for distribution.

(h) "Milk product" or "dairy product" means cottage cheese, dry curd cottage cheese, reduced fat cottage cheese, lowfat cottage cheese, cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, flavored milk, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Unless a product is considered a milk product under this subdivision, milk product does not include dietary products, infant formula, ice cream or other desserts, cheese, or butter. Milk products include the following:

(*i*) Those dairy foods made by modifying the federally standardized products described in this section in accordance with 21 CFR 130.10.

(*ii*) Those milk and milk products that have been aseptically processed and then packaged.

(*iii*) Those products that have been retort processed after packaging or that have been concentrated, condensed, or dried only if they are used as an ingredient to produce any milk or milk product or if they are grade A national conference of interstate milk shipments listed.

288.475 Definitions; M to O.

Sec. 5. As used in this act:

(a) "Milk tank truck" means both a bulk milk pickup tanker and a milk transport tank.

(b) "Milk tank truck cleaning facility" means any place, premises, or establishment, separate from a milk plant, receiving station, or transfer station where a milk tank truck is cleaned and sanitized.

(c) "Milk tank truck driver" means any person who transports raw or pasteurized milk products to or from a milk plant, receiving station, or transfer station.

(d) "Milk transportation company" means the company that is the person responsible for a milk tank truck.

(e) "Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler/sampler to transport bulk shipments of milk from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

(f) "Misbranded" means food to which any of the following apply:

(*i*) Its labeling is false or misleading in any particular.

(*ii*) It is offered for sale under the name of another food.

(*iii*) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(*iv*) Its container is so made, formed, or filled as to be misleading.

(*v*) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(*vi*) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(*vii*) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(*viii*) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(*ix*) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(*x*) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(*xi*) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(*xii*) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(*xiii*) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(g) "Offering for sale" means selling, offering to sell, holding for sale, preparing for sale, trading, bartering, offering as a gift as an inducement for sale of, and advertising for sale in any media.

(h) "Other security" means a mutually acceptable producer security agreement, acceptable to the director, approved and signed by the milk buyer and all milk sellers selling milk to that milk buyer.

288.476 Definitions; P to S.

Sec. 6. As used in this act:

(a) "Pasteurized milk ordinance" or "PMO" means the 2007 edition of the grade A pasteurized milk ordinance, recommendations of the United States department of health and human services, public health service/food and drug administration, with administrative procedures and appendices, set forth in the public health service/food and drug administration publication no. 229.

(b) "Person" means an individual, partnership, company, limited liability company, cooperative, association, firm, trustee, educational institution, state or local government unit, or corporation.

(c) "Processor" means the owner or operator of a milk plant.

(d) "Producer" means a person who owns or operates a dairy farm and sells or distributes milk produced on that farm including a person who markets milk on behalf of a producer pursuant to a marketing agreement.

(e) "Receiving station" means any place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and is prepared for further transporting.

(f) "Registered name" means either a name that is registered as "doing business as" at the county clerk's office in the county in which the producer or processor resides or that is registered with the state of Michigan as a legal entity registered to do business within the state under an assumed name. Registered name includes, but is not limited to, incorporations, corporations, limited liability companies, limited liability partnerships, and similar entities.

(g) "Retail" means selling or offering for sale dairy products directly to a consumer.

(h) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment but does not include a food processing plant.

(i) "Sample transfer instrument" means any of the following:

(*i*) Individually wrapped, sterile, single-service sampling tubes.

(*ii*) Stainless steel metal dippers, with long handles having capacities of 10 milliliters or greater.

(*iii*) Sampling devices approved by the director.

(j) "Sanitary standards" means the dairy equipment construction standards or accepted dairy system operating practices formulated by 1 of the following:

(*i*) 3-A sanitary standards committees representing the international association for food protection, the United States public health service, the United States department of agriculture, and the dairy industry committee as approved by the director.

(*ii*) If sanitary standards are not available for a particular piece of equipment, general sanitary construction standards for dairy equipment formulated by the United States department of agriculture or the food and drug administration as approved by the director.

(*iii*) The equipment or practice is approved by bulletin of the director on a case-by-case basis.

(k) "Sell-by date" means the recommended last date of sale.

(*l*) "Single service containers and closures" means single use containers or parts of single use containers that become milk product contact surfaces when used for the storage, shipping, or marketing of milk or milk products.

(m) "Standard methods" means the seventeenth edition of "Standard Methods for the Examination of Dairy Products", a publication of the American public health association, incorporated by reference.

288.477 Definitions; T to W.

Sec. 7. As used in this act:

(a) "Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from 1 milk tank truck to another.

(b) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by an authorized representative of the milk plant, attesting that the financial statement is correct.

(c) "Wholesale" means selling or offering to sell dairy products to retailers, jobbers, or distributors rather than directly to a consumer.

288.490 Administration of act and promulgation of rules; adoption and incorporation by reference of pasteurized milk ordinance; "regulatory agency" amended; water for milk operations and purposes.

Sec. 20. (1) The department shall administer this act and may promulgate rules for its implementation and enforcement and adopt revisions of references cited in this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except as otherwise specifically defined or described in this act, the pasteurized milk ordinance is adopted and incorporated by reference. Where the words "regulatory agency" are used in these ordinances, they are amended to read the "Michigan department of agriculture" and where "the ____ of ____" are used in these ordinances, they are amended to read "the state of Michigan".

(2) Water for the milkhouse and milking operations and for milk plant purposes shall be from a supply properly located and protected and shall be easily accessible, adequate, and of a safe sanitary quality. Recommendations shall be made to the department by the department of environmental quality according to the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

288.500 Licensing required; prohibited conduct; compliance with act; temporary license or permit; state agencies operating dairy facilities; applicant for initial grade A dairy farm permit; examination of books, records, and accounts; applicants for permits or licenses; milk products manufactured at retail food establishments.

Sec. 30. (1) A person shall not do any of the following without being licensed under this act:

(a) Produce grade A milk to be offered for sale.

(b) Collect grade A milk samples for regulatory purposes.

(c) Operate a milk transportation company that owns or operates a bulk milk tank truck.

(d) Process, label, distribute, or sell grade A milk or grade A milk products, except that a person operating a retail food establishment is exempt from licensure under this act if he or she complies with subsection (8) and is licensed under the food law of 2000. This subdivision does not prevent the sale, at wholesale or retail at a retail food establishment licensed under the food law of 2000, of milk or milk products that are packaged in final consumer packages at a facility licensed under this act.

(e) Wash milk tank trucks.

(f) Manufacture single service containers or closures to be used for grade A milk products, except that the manufacture of single service containers and closures for grade A dry milk products are exempt from this section.

(2) A person licensed under the manufacturing milk law of 2001 or this act and engaged in activities regulated under this act shall comply with the requirements of this act, where applicable, and is subject to the penalties set forth in this act, where applicable.

(3) The director may issue a temporary license or permit for activities regulated by this act.

(4) State agencies operating dairy facilities under a memorandum of understanding with the department are not required to be licensed or permitted or to provide producer security under this act but are required to otherwise be in compliance with this act.

(5) An applicant for an initial grade A dairy farm permit shall complete education, acceptable to the director, on drug residue avoidance control measures, as identified in the pasteurized milk ordinance, prior to receiving the permit.

(6) The director shall examine the books, records, and accounts of a milk plant if the milk plant has not responded to requests from the director pursuant to section 31 or article IV. All examinations of books, records, and accounts required under this subsection shall be made within this state.

(7) All applicants for a permit or license must complete an application provided by the department and meet the minimum requirements of this act, the pasteurized milk ordinance, and rules promulgated under this act.

(8) Milk products manufactured at retail food establishments licensed under the food law of 2000 are exempt from this act if both of the following conditions are met:

(a) All ingredients contained in these products comply with the requirements of the food law of 2000.

(b) The milk products manufactured are not sold wholesale or to another business entity.

288.501 Milk plant license; application; form; renewal; fees; deposit; new construction, remodeling, and equipment changes; late fee; total fees.

Sec. 31. (1) An applicant for an initial license as a milk plant shall apply to the department on a form supplied by the department and provide a statement containing the following:

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the milk plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The anticipated value of greatest milk receipts the milk plant expects to receive during a consecutive 30-day period within the licensing period.

(d) A list of producers, including names, mailing addresses, and department producer permit number, with whom the milk plant intends to do business except that not later than 90 days after becoming licensed for the first time, the milk plant shall send an updated list to the department.

(e) The name of the financial institution through which milk checks are to be issued to producers.

(2) A milk plant shall annually renew a license issued under this act by applying to the department at least 30 days prior to the expiration of the existing license. The anniversary date of a license for a milk plant that is providing a financial statement as a security device is

130 days after the close of the licensee's fiscal year. The milk plant shall apply for renewal of a license on a form supplied by the department and provide a statement containing the following:

(a) The milk plant's correct legal name and any name by which the milk plant is doing business. If the milk plant is a person not an individual, the name of each officer and director, and partner, member, or owner owning in excess of 35% of equity or stock.

(b) The location of the milk plant to which the statement pertains and the name of the responsible person who may be contacted at that location.

(c) The greater of either the value of greatest milk receipts that the milk plant received within a consecutive 30-day period during its last license year or the greatest milk receipts that the milk plant is anticipated to receive during a consecutive 30-day period within the licensing period.

(d) A complete list of producers, including names, mailing addresses, and department producers permit number, with whom the milk plant is doing business.

(e) The name of the financial institution through which milk checks are issued to producers.

(3) Each milk plant shall pay a $175.00 annual licensing or permitting fee, and additionally, an annual fee of $5.00 for each dairy farm whose milk is received at the milk plant, receiving station, or transfer station, plus an additional $10.00 per farm shipping to it if the milk plant, receiving station, or transfer station operator does not maintain an adequate number of industry personnel, as determined by the director, who are approved to conduct certified industry farm inspections. The department shall not levy this additional $10.00 per farm fee if a cooperative association is conducting the certified industry farm program for the milk plant operator. The department shall only charge the dairy farm license fee to the producer if the producer is not assigned to a milk plant that pays the annual fee required by this subsection for the producer. Any such unassigned producer shall be charged a handling fee of $5.00 plus an additional $10.00 if certified industry farm inspectors are not assigned to the farm.

(4) Any fees, assessments, civil or administrative fines, and money from any other source collected by the department under this act shall be deposited into the dairy and food safety fund created in section 4117 of the food law of 2000, MCL 289.4117.

(5) A milk plant operator shall submit detailed plans to the department for approval before commencing new construction, remodeling, and equipment changes. Plans for new construction or remodeling shall include a plan that provides for operational or physical isolation of the milk plant from sources of potential product contamination caused by animal production facilities located in close proximity to the milk plant. Retail or public viewing areas shall be separated from processing areas by a solid floor-to-ceiling partition, except that, as approved by the director, other equally effective means of protection may be used.

(6) The department may impose a late fee of $10.00 for a renewal application for each business day the application is late. The total late fee shall not exceed $100.00. The department shall not issue or renew a license until any fees and fines have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this subsection except as allowed under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may charge a convenience fee and collect from the applicants any additional costs associated with the method of fee payment for the license or permit fees described in this section and sections 32 and 33, not to exceed the costs to the department.

288.503a Receipt of completed application; issuance of license within certain time period; report; "completed application" defined.

Sec. 33a. (1) The department shall issue an initial or renewal license or permit for regulated activities described in sections 31 and 33, other than a grade A dairy farm, a bulk milk hauler/sampler, or a certified industry farm inspector, not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan.

(2) If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license or permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or permit.

(3) If the department fails to issue or deny a license or permit within the time required by this section, the department shall return the license or permit fee and shall reduce the license or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue or deny a license or permit within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license or permit fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural and food issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (1).

(b) The number of applications denied.

(c) The number of applicants not issued a license or permit within the 90-day time period and the amount of money returned to licensees and permittees under subsection (3).

(5) As used in this section, "completed application" means an application that is complete on its face and submitted with any applicable licensing or permit fees and fines as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan. Under appropriate circumstances, completed application includes the completion of construction or renovation of any facility and the passing of a satisfactory inspection.

288.511 Security device as condition to issuance and maintenance of license; exemption.

Sec. 41. (1) The department shall revoke or deny a license for a milk plant if the licensee or applicant fails to provide 1 of the security devices required as a condition to issuance and maintenance of a license. As a condition to issuance and maintenance of a license, a milk plant that is a first receiving point for milk shall provide 1 or more of the security devices described in section 42, 43, or 44.

(2) Milk plants that receive milk only from dairy farms under the same sole proprietorship, the same registered partnership, or the same corporate ownership having the same registered name as the milk plant are exempt from the requirements of this section.

288.514 Prepayment.

Sec. 44. A licensee or applicant for licensure as a milk plant not providing a security device under section 42 or 43 shall provide an agreement in which the milk plant prepays for its milk supply by means of cash payments before or at the time the milk is received at the plant.

288.520 Conduct resulting in revocation, suspension, or summary suspension of license or permit; administrative action; notice to each producer; time period for licensee or permittee to regain compliance and reinstatement.

Sec. 50. (1) The director may revoke or suspend the license or permit of a licensee or permittee issued under this act or impose an administrative fine under section 53 for failure to comply with the requirements of this act, the pasteurized milk ordinance, or a rule promulgated under this act. A license or permit shall be revoked or suspended according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) The department shall notify in writing each producer with whom a milk plant does business regarding the pendency of the administrative action not less than 5 days before the date for the formal hearing set under subsection (1).

(3) The director may revoke or suspend a license or permit issued under this act, or impose an administrative fine pursuant to section 53, upon determining that the licensee or permittee has done 1 or more of the following:

(a) Failed to provide supplementary or interim information or information required to be supplied to the department under this act or information requested by the director under article III or IV.

(b) Failed to provide a security device in the amount and manner required by the director under article IV.

(c) Knowingly provided false or fraudulent information or made a material misrepresentation on an application.

(d) Knowingly provided false or fraudulent information or made a material misrepresentation in response to a request for information by the department.

(e) Failed to pay a producer in the manner provided in section 40.

(f) Failed to agitate milk in the farm bulk milk tank before taking a sample for delivery to the milk plant or the department.

(g) Failed to take the sample for analysis in accordance with the procedures set forth in the pasteurized milk ordinance, standard methods, and this act.

(h) Picked up grade A milk the temperature of which exceeds 45 degrees Fahrenheit (7 degrees Celsius).

(i) Failed to accurately report the weight or temperature of grade A milk picked up from a farm bulk milk tank.

(j) In the case of a milk plant, failed to provide a security device described in article IV.

(k) Adulterated milk or milk products.

(*l*) Failed to pay a final civil or administrative fine issued under this act.

(m) Violated this act, the pasteurized milk ordinance adopted under this act, or a rule promulgated under this act.

(4) The director may summarily suspend a license or permit issued under this act upon determining that the licensee or permittee has done 1 or more of the following:

(a) Offered for sale or sold milk or milk products from diseased animals, or animals otherwise considered abnormal, that have been incorporated with milk or milk products from normal healthy animals.

(b) Offered for sale or sold milk or milk products suspected of being contaminated with any substance considered by the department to be an imminent or substantial health hazard.

(c) Offered for sale or sold milk or milk products from production, transportation, packaging, or storage facilities that have such an accumulation of trash, rubbish, dirt, insects, vermin, human or animal wastes, or spoiled milk or milk products that precludes the reasonable protection of the milk or milk products from contamination.

(d) Offered for sale or sold milk or milk products produced in equipment with a significant portion of the milk contact surfaces covered with an accumulation of residues that were left after having gone through a cleaning regimen and that are thick enough that they may be easily scraped to form a body of solids.

(e) Offered for sale or sold milk or milk products stored in a container of unapproved construction.

(f) Received or picked up milk or milk products stored in a container of unapproved construction.

(g) Offered for sale or sold milk or milk products produced from dairy animals with a majority of the milking herd with an excessive accumulation of manure on the flanks, bellies, or udders that precludes the reasonable protection of the milk from contamination during the milking process.

(h) Offered for sale or sold milk that was of inadequate volume to properly agitate after the first milking.

(i) Offered for sale or sold milk or milk products produced with excessive sediment.

(j) Interfered with inspection of milk or milk products.

(k) Maintained dead animals on the premises in a manner inconsistent with 1982 PA 239, MCL 287.651 to 287.683.

(*l*) Maintained a minimum of 3 of the last 5 official bacteria counts illegal.

(m) Maintained a minimum of 3 of the last 5 official somatic cell counts illegal.

(n) Maintained a minimum of 3 of the last 5 official milk or milk product cooling temperatures illegal.

(o) Failed to provide milk or milk products free of violative drug residues based on tests approved by the food and drug administration.

(p) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper or unknown storage temperature.

(q) Offered for sale or sold milk or milk products that present an imminent or substantial health hazard due to improper allergen labeling.

(r) Knowingly possessed, sold, offered for sale, or purchased any milk or milk product for use in a human food product that has been condemned under this act.

(s) Offered for sale or sold packaged milk or milk products that present an imminent or substantial health hazard due to improper pasteurization times or temperatures outside the requirements set forth in the PMO.

(t) Any other condition that creates an imminent threat to the public health, safety, or welfare.

(5) When the director suspends a license or permit under subsection (4), the licensee or permittee shall be allowed a minimum of 72 hours to regain compliance and reinstatement of the license or permit prior to scheduling an administrative hearing.

288.523 Violation of act by producer; sanctions and administrative fines; procedure.

Sec. 53. (1) The director shall impose upon a producer who violates this act by selling or offering for sale milk which has been found positive for violative drug residues on a test performed pursuant to the pasteurized milk ordinance, the following sanctions and administrative fines and provide notice and the opportunity for an administrative hearing:

(a) The following in the case of a first violative drug residue within a 12-month period:

(*i*) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(*ii*) The producer shall pay an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. The administrative fine shall be paid directly to the milk buyer. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of $300.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

(b) The following in the case of a second violative drug residue within a 12-month period:

(*i*) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(*ii*) The producer shall pay an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. The administrative fine shall be paid directly to the milk buyer. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets their own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of $600.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

(*iii*) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and must retain records of these tests for a minimum of 18 months.

(*iv*) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and must retain records of these treatments for a minimum of 18 months.

(c) The following in the case of a third or any additional violative drug residue within a 12-month period:

(*i*) The producer's milk shall not be offered for sale until a subsequent sample of the producer's milk tests negative for violative drug residues at an approved laboratory.

(*ii*) The producer shall pay an administrative fine equal to the lost value of the milk on the entire contaminated load and any costs associated with the disposition of that load. The administrative fine shall be paid directly to the milk buyer. The department shall be provided with written notification of the payment. Written notification shall also be provided to the department of the date and location of the disposal of the entire contaminated load. Where a producer markets its own load of milk, the producer shall provide written notification to the department of the date and location of the disposal of the entire contaminated load. If the producer's violative shipment did not cause partial or total loss of a load of milk as determined by an approved drug residue test, the producer shall pay an administrative fine of $1,200.00 to the department. The milk buyer may pay the administrative fine, if a like amount has been deducted from the producer's milk check.

(*iii*) The suspension of the producer's permit for a period not to exceed 60 days after notice and the opportunity for an administrative hearing before the department.

(*iv*) The producer will be required to test all milk prior to shipment with a drug residue test acceptable to the director for a minimum of 12 months and must retain records of these tests for a minimum of 18 months.

(*v*) The producer will be required to maintain complete drug treatment records for all lactating or near lactating dairy animals for a minimum of 12 months and must retain records of these treatments for a minimum of 18 months.

(2) The director may accept verification, on forms acceptable to the director, from the violative producer's milk marketing cooperative or purchaser of milk as satisfying the penalty requirements and may verify the information.

(3) The disposal method and location of disposal for violative drug residue milk on the milk tank truck shall be immediately reported to the director, by the party making the disposal, on forms provided by and acceptable to the director.

(4) The director shall investigate the cause of the violative drug residue and shall discuss drug residue avoidance control measures, as outlined in the pasteurized milk ordinance, with the violative producer.

(5) Selling or offering for sale milk which has been found positive for violative drug residues is determined by either of the following criteria:

(a) When milk is picked up from a producer by a milk tank truck and not commingled with milk from other producers, the milk becomes subject to possible drug residue penalties at the point the milk tank truck leaves the farm with the milk.

(b) When milk is picked up from a producer by a milk tank truck and commingled with milk from other producers, it becomes subject to possible drug residue penalties at the point of commingling.

(6) Section 52 applies to a producer who violates this act by selling or offering for sale milk which tests positive for violative drug residues on a test performed pursuant to the pasteurized milk ordinance only under either of the following circumstances:

(a) The producer fails to pay the administrative fine required by subsection (1) in compliance with subsections (8) and (9).

(b) The producer has been fined under subsection (1) within the preceding 12-month period 3 or more times.

(7) After notice and an opportunity for an administrative hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a license or permit issued under this act for any violation of this act or a rule promulgated under this act. Except as otherwise provided for under subsection (1), upon finding that a person violated a provision of this act or rule promulgated under this act, the director may impose an administrative fine of not more than $1,000.00 and the actual costs of the investigation of the violation.

(8) The administrative fines imposed under subsection (1) or (7) shall be paid to the department within 10 days after notification of the violation or within 10 days after notification of adverse findings following a hearing or appeal, or both. The administrative fines received by the department under subsections (1) and (7) shall be deposited in the dairy and food safety fund.

(9) Failure to pay a load contamination or any other administrative fine imposed under this section within 120 days without making acceptable arrangements for payment of the fine may result in license revocation or permit suspension or court action, following notice and the opportunity for an administrative hearing.

(10) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(11) A decision of the director under this section is subject to judicial review as provided by law.

(12) This section does not require the director to issue an administrative fine or initiate court action for minor violations of this act whenever the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

288.530 Packaged milk products; label requirements; advertisements.

Sec. 60. (1) Packaged milk products shall be labeled as specified in the pasteurized milk ordinance and in the food law of 2000.

(2) Milk and milk products shall be advertised as specified in the food law of 2000.

288.531 Bulk milk hauler/sampler; requirements for picking up milk; measurement; pickup record; information; copies; responsibility of driver for official samples.

Sec. 61. (1) A bulk milk hauler/sampler shall not take milk from a farm tank without first determining that the farmer has a valid permit. Milk shall be picked up from only an approved farm tank, constructed to sanitary standards with agitation and cooling except as approved in writing by the director on a case-by-case basis.

(2) A bulk milk hauler/sampler shall pick up only milk that appears to be normal and does not contain off odors or visible foreign material and that has been stored on the farm for no more than 72 hours, except that milk produced under the manufacturing milk law of 2001 may be stored as provided under that act. Goat milk may be stored up to 7 days in a farm tank if properly cooled. Sheep milk may be frozen for storage.

(3) A bulk milk hauler/sampler shall not record or report inaccurately a milk measurement taken in the farm tank. A measurement shall be made with a measuring gauge that is clean and wiped dry with a sanitary towel or by any other measuring method meeting the requirements of section 65(3).

(4) After measuring the milk in the farm tank, the bulk milk hauler/sampler shall promptly, accurately, and legibly record the following information on the pickup record:

(a) The gauge or stick reading.

(b) The converted gauge or stick reading in pounds.

(c) The date and time of pickup.

(d) The milk producer's name and permit number.

(e) The temperature of the milk from an accurate thermometer.

(f) The bulk milk hauler/sampler's permit identification, which is the first and last name, or the hauler/sampler's identification number printed on the license.

(g) The assigned "bulk tank unit" (BTU) number.

(5) A bulk milk hauler/sampler shall provide the original copy of the pickup record to the milk buyer and a duplicate copy, or other record acceptable to the director, to the producer.

(6) A milk tank truck driver engaged in direct farm pickup has direct responsibility for accompanying official samples.

288.532 Bulk milk hauler/sampler; duties.

Sec. 62. (1) During a pickup, a bulk milk hauler/sampler shall take a sanitarily collected representative sample from each farm tank after the tank is agitated for not less than 5 minutes and for not less than 10 minutes for tanks over 1,500 gallons or for such additional time as may be recommended by the tank manufacturer or the director, so as to obtain a representative sample.

(2) A sample dipper shall be rinsed by the bulk milk hauler/sampler at least twice in the milk prior to transferring the sample to the approved sample container.

(3) Sample transfer instruments shall be used by bulk milk hauler/samplers that are of sanitary construction, clean, and sterile, or which are sanitized with approved sanitizers and protected from contamination prior to each use.

(4) A bulk milk hauler/sampler shall take a temperature control sample of the milk at the bulk milk hauler/sampler's first sampling point and shall place it in the refrigerated, insulated transport case with the first official sample.

(5) The bulk milk hauler/sampler shall identify the temperature control sample with the hauler/sampler identification, time, temperature, date, producer permit number, and letters "T.C.".

(6) A bulk milk hauler/sampler shall not sample milk in the farm tank during emptying.

(7) A bulk milk hauler/sampler shall not sample milk in the farm tank with a sample container or any other unapproved transfer instrument or sampling device.

(8) A bulk milk hauler/sampler shall place producer milk samples into approved sample containers only. The sample containers shall be properly protected and handled to prevent contamination.

(9) A bulk milk hauler/sampler shall place milk only in sample containers that are legibly marked with the following:

(a) The milk producer's permit number.

(b) The date of pickup.

(c) Temperature.

(10) The bulk milk hauler/sampler shall store the milk samples in an approved manner to protect the samples from contamination inside a refrigerated, insulated transport case that is kept tightly covered until the samples are delivered to the transfer point, laboratory, or other destination.

(11) The bulk milk hauler/sampler shall maintain milk samples in a temperature range of 32 degrees Fahrenheit (0 degree Celsius) to 40 degrees Fahrenheit (4.4 degrees Celsius).

288.533 Bulk milk hauler/sampler; partial pickups; thermometer; sample transfer instrument and transport case; hose port; compliance with pasteurized milk ordinance.

Sec. 63. (1) A bulk milk hauler/sampler shall not adulterate milk in the farm tank or the milk tank truck.

(2) There shall be no partial removal of milk from the farm tank by the bulk milk hauler/sampler except that partial pickups may be permitted when the farm tank is equipped with a 7-day recording device complying with the specifications of pasteurized milk ordinance appendix H, or another recording device acceptable to the department, provided that the farm milk tank shall be cleaned and sanitized when empty and shall be emptied at least every 72 hours. In the absence of a temperature recording device, partial pickups may be permitted as long as the farm tank is completely empty, clean, and sanitized before the next milking. In the event of emergency situations or seasonal weight restrictions, partial pickups will be allowed.

(3) A bulk milk hauler/sampler shall carry an accurate, approved dial-type or electronic thermometer with him or her on the route and shall not pickup milk from a farm tank which exceeds the maximum temperature allowed by law.

(4) A bulk milk hauler/sampler shall keep his or her sample transfer instrument and sample transport case clean and in good repair.

(5) A bulk milk hauler/sampler shall use the hose port provided for him or her in the milkhouse for accommodation of the pickup milk hose.

(6) A bulk milk hauler/sampler shall comply with the requirements of appendix B of the pasteurized milk ordinance, incorporated herein by reference.

288.538 Pasteurized milk and milk products offered for sale; requirements.

Sec. 68. (1) Only pasteurized milk and milk products shall be offered for sale or sold, directly or indirectly, to the final consumer or to restaurants, grocery stores, or similar establishments.

(2) All milk and milk products shall be pasteurized according to the requirements of the pasteurized milk ordinance and the time-temperature relationships described in the pasteurized milk ordinance.

(3) All dairy plant by-products used for feeding purposes for farm animals shall be pasteurized or be derived from pasteurized products when specified by the director.

(4) Milk and milk products may be aseptically processed as low-acid foods provided they comply with the following requirements:

(a) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall be processed in a milk processing facility licensed under this act, the manufacturing milk law of 2001, or the food law of 2000.

(b) All processors of acidified milk and milk products packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 114.

(c) All thermally processed milk and milk products that are packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 CFR part 108, 21 CFR part 110, and 21 CFR part 113.

(d) Hermetically sealed packages shall be handled to maintain product and container integrity.

288.539 Sell-by date; requirements.

Sec. 69. (1) Each processor and manufacturer of milk and milk products sold in this state shall place on each container of milk and milk products a recommended last day of sale by month and date.

(2) The sell-by date shall be expressed by the first 3 letters of the month followed by the numeral designating the appropriate calendar day or by expressing the calendar month numerically followed by a numeral designating the calendar day.

(3) The sell-by date shall appear on that part of the container that is most likely to be displayed, presented, or shown under customary display conditions of sale. However, a cup container may have the sell-by date placed on the bottom.

(4) The sell-by date on the container shall be legible and shall not interfere with the legibility of other information required to be on the product.

(5) Processors and manufacturers of milk and milk products shall register the following information with the department on forms provided by the department:

(a) The assigned sell-by date of each milk and milk product processed and the length of time between production and the sell-by date. Plant records of a testing program conducted shall substantiate this length of time by the processor or manufacturer.

(b) The method of application and location of the sell-by date for each size and style of container.

(c) Changes in the time interval of the sell-by date prior to the effective day of the change.

(6) Milk and milk products shall maintain nutritional levels and shall not have a flavor change before the sell-by date.

(7) The director shall periodically sample and analyze milk and milk products to determine if the flavor has changed by the sell-by date. Milk and milk products obtained for analysis by the director prior to the sell-by date shall be stored at a temperature of 44 degrees Fahrenheit (6.5 degrees Celsius), plus or minus 1 degree Fahrenheit (0.5 degree Celsius), until analyzed.

(8) The processor or manufacturer of milk or milk products which do not maintain their flavor until the sell-by date shall, upon receipt of written or verbal notice from the director, make the changes necessary to improve product quality or alter the sell-by date so as to comply with the law. The processor or manufacturer is not responsible for milk and milk products when the nutritive value loss or flavor deterioration of those products can be determined to be caused by mishandling, improper storage, or lack of refrigeration at points beyond his or her control.

(9) Milk and milk products shall not be offered for sale after the sell-by date unless they are advertised to the final consumer in a prominent manner as being beyond the recommended last day of sale.

(10) The final seller is fully responsible for the proper advertisement of milk and milk products sold beyond the sell-by date.

(11) Packaged fluid dairy products that exceed the sell-by date shall not be reused in any dairy products regulated by this act or the manufacturing milk law of 2001 unless a protocol for such reprocessing is approved by the department. The protocol shall include consideration of storage temperatures, bacterial counts, age past sell-by date, sight and smell grading qualities, added ingredients, and any other factors considered critical by the director.

(12) Packaged fluid dairy products that have left the control of a dairy plant but are returned or delivered to a dairy plant, commonly referred to as "returned products", shall

not be reprocessed into milk or milk products regulated under this act or the manufacturing milk law of 2001.

Effective date.

Enacting section 1. This amendatory act takes effect 30 days after the date it is enacted into law.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 137]

(SB 435)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending section 8152 (MCL 600.8152), as amended by 2002 PA 92.

The People of the State of Michigan enact:

600.8152 Eighty-seventh district.

Sec. 8152. (1) Except as provided in subsections (2) and (3), the eighty-seventh district consists of the counties of Crawford, Kalkaska, and Otsego, is a district of the first class, and has 1 judge.

(2) If the condition in subsection (3) is met, all of the following apply effective January 2, 2009:

(a) The eighty-seventh district consists of the county of Otsego, is a district of the first class, and has 1 judge, and shall be redesignated as the eighty-seventh-A district.

(b) The eighty-seventh-B district consists of the county of Kalkaska and is a district of the first class. Pursuant to section 810a, the Kalkaska county probate judge shall serve as judge of the eighty-seventh-B district.

(c) The eighty-seventh-C district consists of the county of Crawford and is a district of the first class. Pursuant to section 810a, the Crawford county probate judge shall serve as judge of the eighty-seventh-C district.

(3) Subsection (2) does not take effect unless the county of Otsego by resolution adopted by the governing body of the district funding unit approves the reformation of the eighty-seventh district and its redesignation as the eighty-seventh-A district and files a copy of the resolution with the state court administrator.

Eighty-seventh-A district judgeship.

Enacting section 1. The judge of the eighty-seventh district at 11:59 p.m. on January 1, 2009, who resides in the county of Otsego, shall serve as judge of the eighty-seventh-A district for the balance of the term to which he or she was elected or appointed judge of the eighty-seventh district.

Reformation of eighty-seventh district.

Enacting section 2. If Otsego county, acting through its governing body, approves the reformation of the eighty-seventh district to consist of the county of Otsego with 1 district judgeship, that approval constitutes an exercise of the district funding unit's option to provide a new activity or service or to increase the level of activity or service offered in the district funding unit beyond that required by existing law, as the elements of that option are defined by 1979 PA 101, MCL 21.231 to 21.244, and a voluntary acceptance by the district funding unit of all expenses and capital improvements that may result from reformation of the district. However, the exercise of the option does not affect the state's obligation to pay the same portion of each judge's salary which is paid by the state to other district judges as provided by law, or to appropriate and disburse funds to the district funding unit for the necessary costs of state requirements established by a state law which becomes effective on or after December 23, 1978.

Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 138]

(SB 749)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding sections 3185 and 3285.

The People of the State of Michigan enact:

600.3185 Mortgage foreclosure; defendant as service member or deployed in overseas service; actions by court; mortgage and land contract entered into before effective date of act; definitions.

Sec. 3185. (1) If a defendant in an action to foreclose a mortgage on real estate or a land contract is a service member and either the defendant entered into the mortgage or land contract before becoming a service member or the defendant is deployed in overseas service, the court on its own motion may, or on motion of or in behalf of the service member shall, do either or both of the following, unless the court determines that the ability of the defendant to comply with the terms of the obligation secured by the mortgage or land contract is not materially affected by the service member's military service:

(a) Stay proceedings in the action until 6 months after the end of the service member's period of military service.

(b) Issue another order that is equitable to conserve the interests of the parties.

(2) This section does not apply to a mortgage or land contract entered into before the effective date of the amendatory act that added this section.

(3) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in

the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(*i*) Active duty.

(*ii*) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(*iii*) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

600.3285 Validity of foreclosure; violation of subsection (2); penalty; filing of action by attorney general; applicability of section to mortgage entered into before effective date of act; definitions.

Sec. 3285. (1) If a mortgagor is a service member, either the mortgagor entered into the mortgage before becoming a service member or the mortgagor is deployed in overseas service, and, during the service member's period of military service or within 6 months after the end of the period of military service, the mortgage given by the service member is foreclosed by advertisement or the mortgaged real estate sold under a power of sale, the foreclosure or sale is invalid unless the foreclosure or sale was ordered by a court.

(2) A person shall not, individually or acting through another person, foreclose, sell, or attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid under this section. A person who violates this subsection is subject to a civil fine of $2,000.00.

(3) The attorney general may file an action in the circuit court to collect a civil fine under this section. A civil fine collected under this section shall be deposited in the military family relief fund created in section 3 of the military family relief fund act, 2004 PA 363, MCL 35.1213.

(4) This section does not apply to a mortgage entered into before the effective date of the amendatory act that added this section.

(5) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(*i*) Active duty.

(*ii*) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period

of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(*iii*) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

This act is ordered to take immediate effect.
Approved May 21, 2008.
Filed with Secretary of State May 21, 2008.

[No. 139]

(SB 731)

AN ACT to amend 1967 PA 150, entitled "An act to provide for the militia of this state and its organization, command, personnel, administration, training, supply, discipline, deployment, employment, and retirement; and to repeal acts and parts of acts," (MCL 32.501 to 32.851) by adding section 236.

The People of the State of Michigan enact:

32.636 Department-administered post-traumatic stress disorder questionnaire and traumatic brain injury questionnaire.

Sec. 236. (1) An officer or enlisted person serving in the national guard while under state jurisdiction shall take a department-administered post-traumatic stress disorder questionnaire and a traumatic brain injury questionnaire before being deployed in operation Iraqi freedom, operation enduring freedom, or any other overseas service pursuant to any future declaration of war by the United States Congress or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order. The officer or enlisted person is exempt from this requirement if he or she has completed similar questionnaires approved by the United States department of veterans affairs or the United States department of defense while under the control of the federal government.

(2) An officer or enlisted person serving in the national guard within 90 days of his or her return to state jurisdiction from operation Iraqi freedom, operation enduring freedom, or any other overseas service pursuant to any future declaration of war by the United States Congress or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order shall take a department-administered post-traumatic stress disorder questionnaire and a traumatic brain injury questionnaire.

(3) An officer or enlisted person serving in the national guard and who has returned to state jurisdiction from operation Iraqi freedom or operation enduring freedom shall take a department-administered post-traumatic stress disorder questionnaire and a traumatic brain injury questionnaire. The officer or enlisted person is exempt from this requirement if he