(8) The ability of a dental hygienist to administer nitrous oxide analgesia under this section is limited to circumstances in which the dental hygienist may administer not more than 50% nitrous oxide.

(9) In the assisting by a registered dental assistant otherwise qualified under this section in the administration of nitrous oxide analgesia, the nitrous oxide levels must be preset by the dentist or dental hygienist and shall not be adjusted by the registered dental assistant except in the case of an emergency, in which circumstances the registered dental assistant may turn off the nitrous oxide and administer 100% oxygen.

(10) Upon assignment by a dentist, a dental hygienist may take an impression for orthodontic appliances, mouth guards, bite splints, and bleaching trays.

(11) In addition to the rules promulgated by the department under this part, upon delegation by a dentist under section 16215 and under the direct supervision of a dentist, a registered dental assistant may place, condense, and carve amalgam restorations and take final impressions for indirect restorations if the registered dental assistant has successfully completed a course offered by a dental or dental assisting program accredited by the commission on dental accreditation of the American dental association and approved by the department. For taking final impressions and placing, condensing, and carving amalgam restorations, the registered dental assistant shall have completed a course with a minimum of 20 hours' didactic instruction followed by a comprehensive clinical experience of sufficient duration that validates clinical competence through a criterion based assessment instrument.

(12) In addition to the rules promulgated by the department under this part, upon delegation by a dentist under section 16215 and under the general supervision of a dentist, a registered dental assistant may perform the following intraoral dental procedures if the registered dental assistant has successfully completed a course meeting the standards described in subsection (13) offered by a dental or dental assisting program accredited by the commission on dental accreditation of the American dental association and approved by the department:

(a) Performing pulp vitality testing.

(b) Placing and removing matrices and wedges.

(c) Applying cavity liners and bases.

(d) Placing and packing nonepinephrine retraction cords.

(e) Applying desensitizing agents.

(f) Taking an impression for orthodontic appliances, mouth guards, bite splints, and bleaching trays.

(g) Drying endodontic canals with absorbent points.

(h) Etching and placing adhesives prior to placement of orthodontic brackets.

(13) The course in subsection (12) that involves those intraoral procedures described in subsection (12) must contain a minimum of 10 hours of didactic and clinical instruction.

(14) This section does not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed as a dental assistant or as a dental hygienist under this article.

(15) Within 30 days after the effective date of the amendatory act that added this subsection, the board shall develop patient safety and equipment practice guidelines for dentists delegating to dental hygienists and dental assistants the administration of nitrous oxide analgesia under this part. The practice guidelines shall be consistent with national recommendations.

(16) As used in this section:

(a) "Assisting" means setting up equipment and placing the face mask. Assisting does not include titrating and turning on or off equipment.

(b) "Direct supervision" means that a dentist complies with all of the following:

(*i*) Designates a patient of record upon whom the procedures are to be performed and describes the procedures to be performed.

(*ii*) Examines the patient before prescribing the procedures to be performed and upon completion of the procedures.

(*iii*) Is physically present in the office at the time the procedures are being performed.

(c) "General supervision" means that a dentist complies with all of the following:

(*i*) Designates a patient of record upon whom services are to be performed.

(*ii*) Is physically present in the office at the time the procedures are being performed.

(d) "Monitoring" means observing levels and reporting to the dentist or dental hygienist.

This act is ordered to take immediate effect.
Approved March 19, 2004.
Filed with Secretary of State March 22, 2004.

[No. 31]

(HB 4871)

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 5759 (MCL 600.5759).

The People of the State of Michigan enact:

600.5759 Costs.

Sec. 5759. (1) In proceedings under this chapter, costs may be allowed in the same amounts as are provided by law in other civil actions in the same court, except that the costs provided by section 2441 shall not apply. The court may also allow as taxable costs an amount not exceeding the following:

(a) For a motion that results in dismissal or judgment, $75.00.

(b) For a judgment taken by default or consent, $75.00.

(c) For the trial of a claim for possession only, $150.00.

(d) For the trial of a claim for a money judgment only, $150.00.

(e) For a trial including both a claim for possession and a claim for a money judgment, $150.00.

(2) In determining taxable costs in tenancy cases, the judge shall take into consideration whether the jury or judge found that a portion of the rent allegedly due to the plaintiff was excused by reason of the plaintiff's breach of the lease or breach of his or her statutory covenants.

Effective date.

Enacting section 1. This amendatory act takes effect July 1, 2004.

This act is ordered to take immediate effect.
Approved March 19, 2004.
Filed with Secretary of State March 22, 2004.

[No. 32]

(HB 5199)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 9 and 9a of chapter X (MCL 770.9 and 770.9a), section 9a as amended by 2002 PA 483, and by adding section 9b to chapter X.

The People of the State of Michigan enact:

CHAPTER X

770.9 Bail during pendency of appeal or application for leave to appeal.

Sec. 9. During the pendency of an appeal or application for leave to appeal, a justice or judge of the court in which the appeal or application is filed may admit the defendant to bail, if the offense charged is bailable and if the offense is not an assaultive crime as defined in section 9a of this chapter or sexual assault of a minor as described in section 9b of this chapter.

770.9a Detention and denial of bail where defendant convicted of assaultive crime; "assaultive crime" defined; expediting appeal or application for leave to appeal.

Sec. 9a. (1) A defendant convicted of an assaultive crime and awaiting sentence shall be detained and shall not be admitted to bail unless the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other persons and that section 9b of this chapter does not apply.

(2) A defendant convicted of an assaultive crime and sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal shall be detained and shall not be admitted to bail unless the trial court or the court to which the appeal is taken finds by clear and convincing evidence that section 9b of this chapter does not apply and that both of the following exist:

(a) The defendant is not likely to pose a danger to other persons.

(b) The appeal or application raises a substantial question of law or fact.

(3) As used in this section, "assaultive crime" means an offense against a person described in section 81c(3), 82, 83, 84, 86, 87, 88, 89, 90a, 90b(a) or (b), 91, 200 to 212a, 316, 317, 321, 349, 349a, 350, 397, 411h(2)(b) or (3), 411i, 520b, 520c, 520d, 520e, 520g, 529, 529a, 530, or 543a to 543z of the Michigan penal code, 1931 PA 328, MCL 750.81c, 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.90a, 750.90b, 750.91, 750.200 to 750.212a, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.411h, 750.411i, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, 750.530, and 750.543a to 750.543z.

(4) The appeal or application for leave to appeal filed by a person denied bail under this section shall be expedited pursuant to rules adopted for that purpose by the supreme court.

770.9b Detention and denial of bail where defendant convicted of sexual assault of minor; definitions.

Sec. 9b. (1) A defendant convicted of sexual assault of a minor and awaiting sentence shall be detained and shall not be admitted to bail.

(2) A defendant convicted of sexual assault of a minor sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal shall be detained and shall not be admitted to bail.

(3) As used in this section:

(a) "Minor" means an individual less than 16 years of age.

(b) "Sexual assault of a minor" means a violation of any of the following:

(*i*) Section 520b, 520c, 520d(1)(b), (c), (d), or (e) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, in which the victim of the offense is a minor.

(*ii*) Section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d, if the actor is 5 or more years older than the victim.

(*iii*) Section 520g of the Michigan penal code, 1931 PA 328, MCL 750.520g, for assaulting an individual with the intent to commit criminal sexual conduct described in subparagraphs (*i*) and (*ii*).

Effective date.

Enacting section 1. This amendatory act takes effect June 30, 2004.

This act is ordered to take immediate effect.
Approved March 19, 2004.
Filed with Secretary of State March 22, 2004.

[No. 33]

(HB 5266)

AN ACT to amend 1943 PA 240, entitled "An act to provide for a state employees' retirement system; to create a state employees' retirement board and prescribe its powers and duties; to establish certain funds in connection with the retirement system; to require contributions to the retirement system by and on behalf of members and participants of the retirement system; to create certain accounts and provide for expenditures from those accounts; to prescribe the powers and duties of certain state and local officers and employees and certain state departments and agencies; to prescribe and make appropriations for the retirement system; and to prescribe penalties and provide remedies," by amending sections 1a, 1e, 1i, 49, 53, 55, and 64 (MCL 38.1a, 38.1e, 38.1i, 38.49, 38.53, 38.55, and 38.64), section 1a as amended by 1998 PA 205, sections 1e and 1i as amended and sections 53, 55, and 64 as added by 1996 PA 487, and section 49 as amended by 2002 PA 93.

The People of the State of Michigan enact:

38.1a Definitions; A, B.

Sec. 1a. (1) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the employees' savings fund, together with regular interest on that account.

(2) "Actuarial cost" means an amount that shall be paid, except as otherwise specifically provided by this act, by a member to purchase additional service credit as allowed under this act. Actuarial cost shall be computed as provided in section 17j.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member. An annuity shall be paid in equal monthly installments.

(4) "Annuity reserve" means the present value, computed upon the basis of mortality and other tables adopted by the retirement board, of all payments to be made on account of an annuity, or benefits in lieu of an annuity, granted to a member under this act.

(5) "Appointing authority" means the departmental officer who has the responsibility of making appointments and handling all other personnel transactions affecting the employees in the agency that the officer represents.

(6) "Banked leave time program" means the part B annual leave hours within the annual and sick leave program for state employees approved by a ruling of the internal revenue service on September 5, 2003, in which a pay reduction or other concessions are applied to a member or qualified participant in exchange for additional part B annual leave hours.

38.1e Definitions; F to I.

Sec. 1e. (1) "Final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 5 consecutive years of credited service; or if the member has less than 5 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited service. For a person whose retirement allowance effective date is on or after October 1, 1987, "final average compensation" means the average of those years of highest annual compensation paid to a member during a period of 3 consecutive years of credited service; or if the member has less than 3 years of credited service, then the average of the annual compensation paid to the member during the member's total years of credited

service. A member's final average compensation shall not be diminished because of required 1-day layoffs. The compensation used in computing the final average compensation for a period during which a member is in a voluntary or involuntary pay reduction plan A or on a designated temporary layoff shall include the value of the hours not worked calculated at the member's hourly rate or rates of pay in effect immediately before the applicable final average compensation period. A member's final average compensation shall not be increased or decreased by the member's participation in voluntary or involuntary pay reduction plan B. Payment for accrued annual leave at separation in excess of 240 hours and payment for part B annual leave hours at separation shall not be included in final average compensation. Beginning October 1, 2003, the compensation used to compute the final average compensation for a period during which a member is participating in the banked leave time program shall include the value of any unpaid furlough hours and the value of any unpaid hours exchanged for part B annual leave hours calculated at the member's then current hourly rate or rates of pay.

(2) "Final compensation" means a member's annual rate of compensation at the time the member last terminates employment with this state.

(3) "Furlough hours" means unworked hours incurred in conjunction with the banked leave time program.

(4) "Internal revenue code" means the United States internal revenue code of 1986.

38.1i Definitions; S, T.

Sec. 1i. (1) "Service" means service rendered to this state by an elected or appointed state official or employee of this state. Credit for service shall be determined by appropriate rules and regulations of the retirement board, but not more than 1 year of service shall be creditable for all service in 1 calendar year. The retirement board shall not allow credit for service for any period of more than 1 month in any 1 calendar year during which the employee was absent without pay. However, full service credit shall be given for a period during which an employee is on leave of absence and is receiving worker's compensation benefits as the result of a duty-incurred disability. Full service credit shall also be given to an employee for required 1-day layoffs, for voluntary or involuntary participation in pay reduction plan A, pay reduction plan B, or both, in effect during the fiscal years ending on and after September 30, 1981, for required and designated temporary layoffs, and, beginning October 1, 2003, for furlough hours, and for participation in the banked leave time program.

(2) "State treasurer" means the treasurer of this state.

(3) "Tier 1" means the retirement plan available to a member under this act who was first employed and entered upon the payroll before March 31, 1997 and who does not elect to become a qualified participant of Tier 2.

(4) "Tier 2" means the retirement plan established pursuant to section 401(k) of the internal revenue code that is available to qualified participants under sections 50 to 69.

38.49 Administration of retirement system as qualified pension plan under internal revenue code; requirements and benefit limitations.

Sec. 49. (1) This section is enacted pursuant to section 401(a) of the internal revenue code, 26 USC 401, that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code, 26 USC 401, and that the trust be an exempt organization under section 501 of the internal

revenue code, 26 USC 501. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans. Employer-financed benefits provided by the retirement system under this act shall not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415, to reflect cost-of-living increases, and the retirement system shall adjust the benefits subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415, the applicable limitation shall apply to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, vested former members, retirants, and retirement allowance beneficiaries before satisfaction of all retirement system liabilities.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(6) If the retirement system is terminated, the interest of the members, vested former members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411, and related internal revenue service regulations applicable to governmental plans.

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(8) For purposes of determining actuarial equivalent retirement allowances under sections 31(1)(a) and (b) and 20(2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(9) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401, as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(10) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement

system in accordance with section 414(u) of the internal revenue code, 26 USC 414. This subsection applies to all qualified military service on or after December 12, 1994.

38.53 Meanings of words and phrases; definitions; A to C.

Sec. 53. (1) For the purposes of this section and sections 54 to 69, the words and phrases defined in this section and sections 54 to 69 have the meanings ascribed to them in those sections.

(2) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(3) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer equal to the sum of the following:

(a) A participant's W-2 earnings for services performed for the employer excluding part B annual leave hours paid at separation.

(b) Any amount contributed or deferred at the election of the participant which is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

(c) Beginning October 1, 2003, the value of any unpaid furlough hours and the value of any unpaid hours exchanged for part B annual leave hours calculated at the participant's then current hourly rate or rates of pay for a period during which a participant is participating in the banked leave time program.

(d) The value of hours not worked during which a participant is in a voluntary or involuntary pay reduction plan A or on 1-day layoff or designated temporary layoff calculated at the participant's then current hourly rate or rates of pay.

38.55 Definitions; P to Y.

Sec. 55. (1) "Plan document" means the document that contains the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(2) "Qualified participant" means an individual who is a participant of Tier 2 and who meets 1 of the following requirements:

(a) An individual who is first employed and entered upon the payroll of his or her employer on or after March 31, 1997, and who before March 31, 1997 would have been eligible to be a member of Tier 1.

(b) An individual who elects to terminate membership in Tier 1 and who elects to participate in Tier 2 in the manner prescribed in section 50.

(3) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 66 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 67.

(4) "State treasurer" means the treasurer of this state.

(5) Except as otherwise provided in this subsection, "year of service" means each period during which a qualified participant is employed by the employer and is credited with 2,080 hours of service. The Tier 2 plan administrator and the plan document may provide for a lesser number of annual hours and a maximum number of hours per pay period for any classification of employees, provided that no participant shall receive credit for more than 1 year of service for any 12-month period of employment. Beginning January 1, 2003, full service credit shall also be given to a participant for furlough hours, for required 1-day layoffs, for required and designated temporary layoffs, for a year in which a participant temporarily leaves employment to enter active military duty and then

dies during that active military duty, and for participation in the banked leave time program. In the event a terminated participant is reemployed, such individual shall retain credit for all full and partial years of service completed prior to such reemployment, for purposes of determining his or her vesting percentage in any employer contributions made pursuant to section 63(2) and (3) after his or her reemployment.

38.64 Vesting requirements.

Sec. 64. (1) A qualified participant is immediately 100% vested in his or her contributions made to Tier 2 and employer contributions under the banked leave time program. Except as otherwise provided in this section, a qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

(2) A qualified participant is vested in the health insurance coverage provided in section 68 if the qualified participant meets 1 of the following requirements:

(a) The qualified participant has completed 10 years of service as a qualified participant and was not a member, deferred member, or former nonvested member of Tier 1.

(b) The qualified participant was a member, deferred member, or former nonvested member of Tier 1 who made an election to participate in Tier 2 pursuant to section 50, and who has met the service requirements he or she would have been required to meet in order to vest in health benefits under section 20d.

This act is ordered to take immediate effect.
Approved March 19, 2004.
Filed with Secretary of State March 22, 2004.

[No. 34]

(SB 498)

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

The People of the State of Michigan enact:

324.11514 Promotion of recycling and reuse of materials; materials prohibited from disposal in landfill; applicability of subsection (2)(b) to green glass beverage containers; task force; report; "de minimis" defined.

Sec. 11514. (1) The legislature declares that optimizing recycling opportunities and the reuse of materials shall be a principal objective of the state's solid waste management plan

and further that recycling and reuse of materials are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste.

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

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

(b) Subject to subsection (4), more than a de minimis amount of open, empty, or otherwise used beverage containers.

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

(d) More than a de minimis amount of yard clippings, unless they are diseased or infested.

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

(a) Used oil as defined in section 16701.

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

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

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

(e) Liquid waste as prohibited by R 299.4432(2)(c) of the Michigan administrative code.

(f) Sewage.

(g) PCBs as defined in 40 CFR section 761.3.

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

(4) Subsection (2)(b) does not apply to green glass beverage containers before June 1, 2007. The department shall convene a task force to make recommendations to the legislature on the special recycling problems posed by green glass beverage containers, including, but not limited to, whether the June 1, 2007 date for applicability of subsection (2)(b) to green glass beverage containers should be changed. The task force shall include, but need not be limited to, all of the following:

(a) A representative of the landfill industry.

(b) A representative of a company that manufactures or uses green glass beverage containers.

(c) A representative of a recycling company.

(d) A representative of an environmental organization.

(5) The task force under subsection (4) shall issue its recommendations by December 31, 2004.

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

(7) As used in this section, "de minimis" means incidental disposal of small amounts of these materials that are commingled with other solid waste.

Repeal of MCL 324.11521.

Enacting section 1. Section 11521 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11521, is repealed.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

(a) House Bill No. 5234.

(b) House Bill No. 5235.

(c) Senate Bill No. 497.

(d) Senate Bill No. 500.

(e) Senate Bill No. 502.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
House Bill No. 5234 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 40, Imd. Eff. Mar. 29, 2004.
House Bill No. 5235 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 42, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 497 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 35, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 500 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 41, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 502 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 37, Imd. Eff. Mar. 29, 2004.

[No. 35]

(SB 497)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 11502 (MCL 324.11502), as amended by 1996 PA 359.

The People of the State of Michigan enact:

324.11502 Definitions; A to C.

Sec. 11502. (1) "Applicant" includes any person.

(2) "Ashes" means the residue from the burning of wood, coal, coke, refuse, wastewater sludge, or other combustible materials.

(3) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(4) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under other state or federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under other state or federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.

(5) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(6) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(7) "Coal or wood ash" means either or both of the following:

(a) The residue remaining after the ignition of coal or wood, or both, and may include noncombustible materials, otherwise referred to as bottom ash.

(b) The airborne residues from burning coal or wood, or both, that are finely divided particles entrained in flue gases arising from a combustion chamber, otherwise referred to as fly ash.

(8) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(9) "Consistency review" means evaluation of the administrative and technical components of an application for a permit, license, or for operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(10) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6941 and 6942 to 6949a or regulations promulgated pursuant to that act.

Conditional effective date.

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

(a) House Bill No. 5234.

(b) Senate Bill No. 498.

(c) Senate Bill No. 500.

(d) Senate Bill No. 502.

(e) House Bill No. 5235.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
House Bill No. 5234 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 40, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 498 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 34, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 500 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 41, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 502 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 37, Imd. Eff. Mar. 29, 2004.
House Bill No. 5235 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 42, Imd. Eff. Mar. 29, 2004.

[No. 36]

(SB 57)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 11526c.

The People of the State of Michigan enact:

324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.

Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning

not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

[No. 37]

(SB 502)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 11526b.

The People of the State of Michigan enact:

324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.

Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5234 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: House Bill No. 5234, referred to in enacting section 1, was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 40, Imd. Eff. Mar. 29, 2004.

[No. 38]

(SB 506)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 11511a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

324.11511a Permit to construct, modify, or expand landfill; application; issuance; report; requirements; definitions.

Sec. 11511a. (1) Notwithstanding any other provision of this part, and except as otherwise provided in this section, the department shall not issue a permit to construct a

landfill if the administratively complete application for such permit was received after January 1, 2004 and before January 1, 2006.

(2) The department may issue a permit for a design modification to an existing landfill if the modification does not result in a net increase in remaining disposal capacity as calculated under section 11507a.

(3) The department may issue a permit to construct an expansion to an existing landfill if the applicant demonstrates that the landfill has less than 5 years of remaining disposal capacity as defined in section 11507a and the application otherwise meets the requirements of this part. A permit issued under this subsection shall provide not more than a total of 10 years of remaining disposal capacity when added to the remaining disposal capacity existing prior to issuance of the permit. The amount of time of remaining disposal capacity shall be calculated based on the average of the 3 prior years of waste receipt as reported under section 11507a.

(4) The department may issue a permit to construct a type III landfill that is a captive facility as defined in section 11525a(10) if the application otherwise meets the requirements of this part.

(5) The department may issue a permit to construct an expansion of an existing landfill if the expansion is authorized pursuant to a host community agreement in existence on the effective date of this section.

(6) By January 1, 2005, the department shall submit to the legislature a report providing recommendations for amending the solid waste planning and disposal area siting provisions of this part. The report shall also recommend methods for securing reasonable and necessary regional and statewide disposal capacity considering the paramount public concern in the conservation of the natural resources of the state. The department shall prepare this report based on consultation with affected parties.

(7) For purposes of this section:

(a) "Existing landfill" means a landfill that was licensed under this part to receive waste as of October 1, 2003.

(b) "Host community agreement" means a written, legally binding agreement, between the owner or operator of a landfill and the county or municipality in which an expansion of that landfill will be located, governing the operation, location, or development of the landfill in that county or municipality.

Repeal of MCL 324.11511a; effective date.

Enacting section 1. Section 11511a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11511a, is repealed effective January 1, 2006.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 557 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: Senate Bill No. 557, referred to in enacting section 2, was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 39, Imd. Eff. Mar. 29, 2004.

[No. 39]

(SB 557)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 11507a (MCL 324.11507a), as amended by 2003 PA 153.

The People of the State of Michigan enact:

324.11507a Report on amount of solid waste received by landfill and amount of remaining disposal capacity.

Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under this part but has not yet been constructed. The report shall be submitted on a form provided by the department within 45 days following the end of each state fiscal year.

(2) By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under subsection (1).

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 506 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: Senate Bill No. 506, referred to in enacting section 1, was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 38, Imd. Eff. Mar. 29, 2004.

[No. 40]

(HB 5234)

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

natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 11526a.

The People of the State of Michigan enact:

324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.

Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 502 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: Senate Bill No. 502, referred to in enacting section 1, was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 37, Imd. Eff. Mar. 29, 2004.

[No. 41]

(SB 500)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 11546 (MCL 324.11546).

The People of the State of Michigan enact:

324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration; civil action.

Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than $10,000.00 for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than $25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person violating this part or the rules promulgated under this part either to restore or to pay to the state an amount equal to the cost of restoring the natural resources of this state affected by the violation to their original condition before the violation, and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation.

(4) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part.

Conditional effective date.

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

(a) House Bill No. 5234.

(b) Senate Bill No. 497.

(c) Senate Bill No. 498.

(d) Senate Bill No. 502.

(e) House Bill No. 5235.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
House Bill No. 5234 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 40, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 497 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 35, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 498 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 34, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 502 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 37, Imd. Eff. Mar. 29, 2004.
House Bill No. 5235 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 42, Imd. Eff. Mar. 29, 2004.

[No. 42]

(HB 5235)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 11527a.

The People of the State of Michigan enact:

324.11527a Website listing materials prohibited from disposal; notice to customers.

Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

Conditional effective date.

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

(a) Senate Bill No. 497.

(b) House Bill No. 5234.

(c) Senate Bill No. 498.

(d) Senate Bill No. 500.

(e) Senate Bill No. 502.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:
Senate Bill No. 497 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 35, Imd. Eff. Mar. 29, 2004.
House Bill No. 5234 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 40, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 498 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 34, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 500 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 41, Imd. Eff. Mar. 29, 2004.
Senate Bill No. 502 was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 37, Imd. Eff. Mar. 29, 2004.

[No. 43]

(SB 499)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 11526 (MCL 324.11526).

The People of the State of Michigan enact:

324.11526 Inspection of solid waste transporting unit; determination; administration; inspections.

Sec. 11526. (1) The department, a health officer, or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed, maintained, and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part.

(2) In order to protect the public health, safety, and welfare and the environment of this state from items and substances being illegally disposed of in landfills in this state, the department, in conjunction with the department of state police, shall administer this part so as to do all of the following:

(a) Ensure that all disposal areas are in full compliance with this part and the rules promulgated under this part.

(b) Provide for the inspection of each solid waste disposal area for compliance with this part and the rules promulgated under this part at least 4 times per year.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with this part and the rules promulgated under this part.

(3) The department and the department of state police may conduct regular, random inspections of waste being transported for disposal at disposal areas in this state. Inspections under this subsection may be conducted at disposal areas at the end original destination.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

[No. 44]

(SB 715)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 11533 and 11538 (MCL 324.11533 and 324.11538).

The People of the State of Michigan enact:

324.11533 Initial solid waste management plan; contents; submission; review and update; amendment; scope of plan; minimum compliance; consultation with regional planning agency; filing, form, and contents of notice of intent; effect of failure to file notice of intent; vote; preparation of plan by regional solid waste management planning agency or by department; progress report.

Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management

plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

324.11538 Rules for development, form, and submission of initial solid waste management plans; requirements; identification of specific sites; calculation of disposal need requirements; interim siting mechanism; annual certification process; new certification; disposal area serving disposal needs of another county, state, or country; compliance as condition to disposing of, storing, or transporting solid waste; provisions or practices in conflict with part.

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the solid waste management plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the solid waste management plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the solid waste management plan.

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will

provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(4) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the solid waste management plan of the exporting county.

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

(8) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute, which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 499 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 26, 2004.
Filed with Secretary of State March 29, 2004.

Compiler's note: Senate Bill No. 499, referred to in enacting section 1, was filed with the Secretary of State March 29, 2004, and became P.A. 2004, No. 43, Imd. Eff. Mar. 29, 2004.

[No. 45]

(HB 5386)

AN ACT to authorize the state administrative board to transfer certain parcels of property in Jackson county.

The People of the State of Michigan enact:

Transfer of land in Blackman township, Jackson county, from department of corrections to department of military and veterans affairs; consideration; description.

Sec. 1. The state administrative board, on behalf of the state, may transfer without consideration from the department of corrections to the department of military and veterans affairs a parcel of land in the township of Blackman, Jackson county, Michigan, more specifically described as follows:

A parcel of land in the NE 1/4 of section 11, T2S, R1W, Blackman Township, Jackson County, Michigan, and more particularly described as commencing at the northeast corner of said section 11; thence S89 degrees, 55'50"W 41.24 feet, on the north line of said section 11 to the westerly right of way line of cooper street; thence 188.41 feet on the arc of a curve to the right with a central angle of 05 degrees 43'24", a radius of 1886.15 feet and a long chord bearing and distance of S08 degrees 31'58"W 188.33 feet on said right of way; thence S11 degrees 23'40"W 219.29 feet, on said right of way to the point of beginning of this description; thence S11 degrees 23'40"W 219.29 feet, on said right of way to the point of beginning of this description; thence S11 degrees 23'40"W 361.91 feet, on said right of way; thence n78 degrees 36'20"W 27.00 feet, on said right of way; thence S11 degrees 23'40"W 277.36 feet, on said right of way; thence 309.16 feet on the arc of a curve to the left with a central angle of 14 degrees 41'20", a radius of 1205.92 feet and a long chord bearing and distance of S 04 degrees 03'00"W 308.32 feet, on said right of way to the south line of the N 1/2 of the NE 1/4 of said section 11; thence S89 degrees 52'30"W 1339.14 feet, on said south line; thence N00 degrees 00'00" 928.50 feet; thence N89 degrees 52'30"E 1513.68 feet, to the point of beginning, containing approximately 30.00 acres.

Transfer of property located in city of Jackson from department of corrections to department of military and veterans affairs; consideration; description.

Sec. 2. The state administrative board, on behalf of the state, may transfer without consideration from the department of corrections to the department of military and veterans affairs certain property located in the city of Jackson, Jackson county, Michigan, and further described as follows:

Commencing at the intersection of the west line of Cooper Street and the north line of Armory Court (formerly Prison Street) in the city of Jackson, Michigan; thence West along the North line of Armory Court 136.15 feet, thence north 1°15' east a distance of 327.85 feet along the east line and the east line extended of the east wall of the old prison, so-called, to a point 10 feet south of the south line of the east gate, so-called, thence north 88°45' west, 251.50 feet, thence north 1°15' east, 364.87 feet, thence north 88°45' west 41.50 feet, thence north 1°15' east, 71.00 feet, thence north 88°45' west 41.00 feet, thence north 1°15' east, 180.37 feet to a point on the south line of North Street, thence east along the south line of North Street 470.15 feet to

the intersection of the south line of North Street and the west line of Cooper Street, thence south on the west line of Cooper Street 944.09 feet to the intersection of Cooper Street and Armory Court to the point of beginning.

Property descriptions; survey adjustment.

Sec. 3. For purposes of this act, the property descriptions in sections 1 and 2 are approximate and subject to possible adjustment by a professional survey conducted by the department of management and budget.

Effective date of transfer.

Sec. 4. The transfers of property authorized by this act shall be effective when approved by a resolution of the state administrative board. The department of military and veterans affairs shall assume full responsibility for the property transferred from the date of transfer.

Documents; preparation and approval by attorney general.

Sec. 5. All documents regarding the transfers of property under this act shall be prepared and approved by the attorney general.

Costs.

Sec. 6. The department of management and budget is responsible for coordinating and implementing the transfers of property under this act, but any survey costs or transaction closing costs incurred by the department of management and budget in doing so shall be reimbursed by the department of military and veterans affairs within 30 days of being presented an itemized bill for those costs.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

[No. 46]

(HB 4178)

AN ACT to provide compensation to dependents of public safety officers who are killed or who are permanently and totally disabled in the line of duty; to create the public safety officers benefit fund; to prescribe the duties and responsibilities of certain state officers; and to make an appropriation.

The People of the State of Michigan enact:

28.631 Short title.

Sec. 1. This act shall be known as the "public safety officers benefit act".

28.632 Definitions.

Sec. 2. As used in this act:

(a) "Commission" means the commission on law enforcement standards created under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616.

(b) "Dependent" means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(c) "Direct and proximate" means that the antecedent event is a substantial factor in the result.

(d) "Firefighter" means a regularly employed member of a fire department of a city, county, township, village, state university, or community college or a member of the department of natural resources who is employed to fight fires. Firefighter includes a volunteer member of a fire department.

(e) "Law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction or enforcement of the criminal law. Law enforcement officer includes police, corrections, probation, parole, bailiffs, or other similar court officers.

(f) "Line of duty" means either of the following:

(*i*) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he or she serves. For other officers, line of duty means any action the officer is so obligated or authorized to perform in the course or controlling or reducing crime, enforcing the criminal law, or suppressing fires.

(*ii*) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(g) "Member of a rescue squad or ambulance crew" means an officially recognized or designated employee or volunteer member of a rescue squad or ambulance crew.

(h) "Permanent and total disability" means medically determinable consequences of a catastrophic, line-of-duty injury that permanently prevent a former public safety officer from performing any gainful work.

(i) "Public safety officer" means any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, rescue squad member, or ambulance crew member.

(j) "Surviving spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

28.633 Public safety officers benefit fund; creation; disposition and investment of funds; lapse; expenditures; rules.

Sec. 3. (1) The public safety officers benefit fund is created within the state treasury.

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

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

(4) The commission shall expend money from the fund, upon appropriation, only to carry out the purposes of this act.

(5) The commission shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that prescribe standards and rules for the distribution of benefits commensurate with the purpose of this act.

28.634 Death or disability of public safety officer; benefit; amount; additional benefit.

Sec. 4. (1) If a public safety officer dies or is permanently and totally disabled as the direct and proximate result of a personal injury sustained in the line of duty, the state shall pay a benefit of $25,000.00 to 1 of the following:

(a) If the deceased public safety officer leaves a surviving spouse, to that surviving spouse.

(b) If the deceased public safety officer does not leave a surviving spouse, to his or her dependents.

(c) If the public safety officer does not leave a surviving spouse or any surviving dependents, payment shall be made to the estate of the deceased public safety officer.

(d) If the public safety officer is permanently and totally disabled, to the spouse, but if there is no spouse, to the dependents, and if there are no dependents, then to the entity providing care to the permanently and totally disabled public safety officer.

(2) The benefit shall be paid in addition to any other benefit that the beneficiary receives due to the death of the public safety officer.

28.635 Interim benefit.

Sec. 5. (1) If it appears to the commission that a benefit will be paid under section 4, and if a showing of need is made, the commission may make an interim benefit payment of not more than $3,000.00 to the person or entity who would be entitled to receive the full benefit payment.

(2) The amount of an interim benefit payment shall be deducted from the amount of any final benefit paid.

(3) If an interim benefit is paid under this section, but a final benefit in that case is not paid because the death or the permanent and total disability of the public safety officer is determined not to be covered under section 4, the recipient of the interim benefit payment is liable for repayment of that benefit payment. However, the state may waive its right to repayment of all or part of the interim benefit payment if substantial hardship would result to the recipient.

28.636 Benefit payment; prohibitions.

Sec. 6. A benefit payment shall not be made under this act if any of the following apply:

(a) The personal injury that resulted in death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by his or her intent to bring about the injury.

(b) The public safety officer was voluntarily intoxicated at the time the personal injury occurred.

(c) The public safety officer was performing his or her duties in a grossly negligent manner at the time the personal injury occurred.

(d) The injury was the direct and proximate result of the actions of an individual to whom payment would be made under this act.

28.637 Appropriation; amount.

Sec. 7. One hundred twenty-five thousand dollars is hereby appropriated from the general fund to the public safety officers benefit fund for fiscal year 2003-2004 to pay for the benefits prescribed in this act.

28.638 Payment of benefits; condition.

Sec. 8. The payment of benefits under this act is subject to an appropriation by the legislature of money necessary to make the payment.

Effective date; retroactive.

Enacting section 1. This act is retroactive and is effective October 1, 2003.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

[No. 47]

(HB 4706)

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.

The People of the State of Michigan enact:

333.26261 Short title.

Sec. 1. This act shall be known and may be cited as the "medical records access act".

333.26263 Definitions.

Sec. 3. As used in this act:

(a) "Authorized representative" means either 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, his or her personal representative or his or her heirs at law or 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.

(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 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 under 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.

333.26265 Request by authorized individual to examine or obtain medical record; response by health care provider or facility; extension of response time.

Sec. 5. (1) Except as otherwise provided by law or regulation, a patient or his or her authorized representative has the right to examine or obtain the patient's medical record.

(2) An individual authorized under subsection (1) who wishes to examine or obtain a copy of the patient's medical record shall submit a written request that is signed and dated by that individual not more than 60 days before being submitted to the health care provider or health facility that maintains the medical record that is the subject of the request. Upon receipt of a request under this subsection, a health care provider or health facility shall, as promptly as required under the circumstances, but not later than 30 days after receipt of the request or if the medical record is not maintained or accessible on-site not later than 60 days after receipt of the request, do 1 or more of the following:

(a) Make the medical record available for inspection or copying, or both, at the health care provider's or health facility's business location during regular business hours or provide a copy of all or part of the medical record, as requested by the patient or his or her authorized representative.

(b) If the health care provider or health facility has contracted with another person or medical records company to maintain the health care provider's or health facility's medical records, the health care provider or health facility shall transmit a request made under this subsection to the person or medical records company maintaining the medical records. The health care provider or health facility shall retrieve the medical record from the person or medical records company maintaining the medical records and comply with subdivision (a) or shall require the person or medical records company that maintains that medical record to comply with subdivision (a).

(c) Inform the patient or his or her authorized representative if the medical record does not exist or cannot be found.

(d) If the health care provider or health facility to which the request is directed does not maintain the medical record requested and does not have a contract with another person or medical records company as described in subdivision (b), so inform the patient or his or her authorized representative and provide the name and address, if known, of the health care provider or health facility that maintains the medical records.

(e) If the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient, the health care provider or health facility shall provide a clear statement supporting that determination and provide the medical record to another health care provider, health facility, or legal counsel designated by the patient or his or her authorized representative.

(f) If the health care provider or health facility receives a request for a medical record that was obtained from someone other than a health care provider or health facility under a confidentiality agreement, the health care provider or health facility may deny access to that medical record if access to that medical record would be reasonably likely to reveal the source of the information. If the health care provider or health facility denies access under this subdivision, it shall provide the patient or his or her authorized representative with a written denial.

(g) The health care provider, health facility, or medical records company shall take reasonable steps to verify the identity of the person making the request to examine or obtain a copy of the patient's medical record.

(3) If the health care provider, health facility, or medical records company is unable to take action as required under subsection (2) and the health care provider, health facility, or medical records company provides the patient with a written statement indicating the reasons for its delay within the required time period, the health care provider, health facility, or medical records company may extend the response time for no more than 30 days. A health care provider, health facility, or medical records company may only extend the response time once per request under this subsection.

333.26267 Inquiry as to purpose prohibited.

Sec. 7. A health care provider or health facility that receives a request for a medical record under section 5 shall not inquire as to the purpose of the request.

333.26269 Fee.

Sec. 9. (1) Except as otherwise provided in this section, if a patient or his or her authorized representative makes a request for a copy of all or part of his or her medical record under section 5, the health care provider, health facility, or medical records company to which the request is directed may charge the patient or his or her authorized representative a fee that is not more than the following amounts:

(a) An initial fee of $20.00 per request for a copy of the record.

(b) Paper copies as follows:

(*i*) One dollar per page for the first 20 pages.

(*ii*) Fifty cents per page for pages 21 through 50.

(*iii*) Twenty cents for pages 51 and over.

(c) If the medical record is in some form or medium other than paper, the actual cost of preparing a duplicate.

(d) Any postage or shipping costs incurred by the health care provider, health facility, or medical records company in providing the copies.

(e) Any actual costs incurred by the health care provider, health facility, or medical records company in retrieving medical records that are 7 years old or older and not maintained or accessible on-site.

(2) A health care provider, health facility, or medical records company may refuse to retrieve or copy all or part of a medical record for a patient or his or her authorized representative until the applicable fee is paid.

(3) A health care provider, health facility, or medical records company shall not charge a fee for retrieving, copying, or mailing all or part of a medical record other than a fee allowed under subsection (1). Except as otherwise provided in subsection (4), a health care provider, health facility, or medical records company shall waive all fees for a medically

indigent individual. The health care provider, health facility, or medical records company may require the patient or his or her authorized representative to provide proof that the patient is a recipient of assistance as described in this subsection.

(4) A medically indigent individual that receives copies of medical records at no charge under subsection (3) is limited to 1 set of copies per health care provider, health facility, or medical records company. Any additional requests for the same records from the same health care provider, health facility, or medical records company shall be subject to the fee provisions under subsection (1).

(5) Notwithstanding subsection (1), a health care provider, health facility, or medical records company shall not charge a patient an initial fee for his or her medical record.

(6) Beginning 2 years after the effective date of this act, the department of community health shall adjust on an annual basis the fees prescribed by subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index.

333.26271 Applicability of act to third party payer.

Sec. 11. This act does not apply to copies of medical records provided to a third party payer, insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106, or self-funded plan.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

[No. 48]

(HB 4755)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16221 and 16226 (MCL 333.16221 and 333.16226), as amended by 2003 PA 234, and by adding section 20170.

The People of the State of Michigan enact:

333.16221 Investigation of licensee, registrant, or applicant for licensure or registration; hearings, oaths, and testimony; report; grounds for proceeding under MCL 333.16226.

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(*i*) Incompetence.

(*ii*) Subject to sections 16165 to 16170a, substance abuse as defined in section 6107.

(*iii*) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

(*iv*) Declaration of mental incompetence by a court of competent jurisdiction.

(*v*) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.

(*vi*) Lack of good moral character.

(*vii*) Conviction of a criminal offense under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(*viii*) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(*ix*) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(*x*) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(*xi*) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(*xii*) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(*i*) Fraud or deceit in obtaining or renewing a license or registration.

(*ii*) Permitting the license or registration to be used by an unauthorized person.

(*iii*) Practice outside the scope of a license.

(*iv*) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Unethical business practices, consisting of 1 or more of the following:

(*i*) False or misleading advertising.

(*ii*) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(*iii*) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

(e) Unprofessional conduct, consisting of 1 or more of the following:

(*i*) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(*ii*) Betrayal of a professional confidence.

(*iii*) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(*iv*) Either of the following:

(A) A requirement by a licensee other than a physician that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(B) A referral by a physician for a designated health service that violates section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section. Section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section, as they exist on June 3, 2002, are incorporated by reference for purposes of this subparagraph. A disciplinary subcommittee shall apply section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this subparagraph, "designated health service" means that term as defined in section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.

(*v*) For a physician who makes referrals pursuant to section 1877 of part D of title XVIII of the social security act, 42 USC 1395nn, or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for medicaid and refusing to accept payment from medicaid or medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which he or she provides

surgical services is not subject to this subparagraph if a referred surgical procedure he or she performs in the facility is not reimbursed at a minimum of the appropriate medicaid or medicare outpatient fee schedule, including the combined technical and professional components.

(f) Beginning June 3, 2003, the department of consumer and industry services shall prepare the first of 3 annual reports on the effect of this amendatory act on access to care for the uninsured and medicaid patients. The department shall report on the number of referrals by licensees of uninsured and medicaid patients to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(g) Failure to report a change of name or mailing address within 30 days after the change occurs.

(h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 or 16223.

(j) Failure to pay an installment of an assessment levied pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

(k) A violation of section 17013 or 17513.

(*l*) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(m) A violation of section 17015 or 17515.

(n) A violation of section 17016 or 17516.

(o) Failure to comply with section 9206(3).

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

(s) A violation of the medical records access act.

333.16226 Sanctions; determination; judicial review; maximum fine for violation of MCL 333.16221(a) or (b); completion of program or examination.

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221	Sanctions
Subdivision (a), (b)(*ii*), (b)(*iv*), (b)(*vi*), or (b)(*vii*)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (b)(*viii*)	Revocation or denial.
Subdivision (b)(*i*), (b)(*iii*), (b)(*v*), (b)(*ix*), (b)(*x*), (b)(*xi*), or (b)(*xii*)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.

Subdivision (c)(*i*)	Denial, revocation, suspension, probation, limitation, community service, or fine.
Subdivision (c)(*ii*)	Denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(*iii*)	Probation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(*iv*) or (d)(*iii*)	Fine, probation, denial, suspension, revocation, community service, or restitution.
Subdivision (d)(*i*) or (d)(*ii*)	Reprimand, fine, probation, community service, denial, or restitution.
Subdivision (e)(*i*)	Reprimand, fine, probation, limitation, suspension, community service, denial, or restitution.
Subdivision (e)(*ii*) or (i)	Reprimand, probation, suspension, restitution, community service, denial, or fine.
Subdivision (e)(*iii*), (e)(*iv*), or (e)(*v*)	Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution.
Subdivision (g)	Reprimand or fine.
Subdivision (h) or (s)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.
Subdivision (j)	Suspension or fine.
Subdivision (k), (p), or (r)	Reprimand or fine.
Subdivision (*l*)	Reprimand, denial, or limitation.
Subdivision (m) or (o)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.
Subdivision (n)	Revocation or denial.
Subdivision (q)	Revocation.

(2) Determination of sanctions for violations under this section shall be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

(3) A disciplinary subcommittee may impose a fine of up to, but not exceeding, $250,000.00 for a violation of section 16221(a) or (b).

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article or article 7 or a rule promulgated under this article or article 7 to satisfactorily complete an educational program, a training program, or a treatment program, a mental, physical, or professional competence examination, or a combination of those programs and examinations.

333.20170 Medical records access; compliance.

Sec. 20170. A health facility or agency shall comply with the medical records access act.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4706 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

Compiler's note: House Bill No. 4706, referred to in enacting section 1, was filed with the Secretary of State April 1, 2004, and became P.A. 2004, No. 47, Imd. Eff. Apr. 1, 2004.

[No. 49]

(HB 4707)

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 675d (MCL 257.675d), as amended by 2000 PA 268.

The People of the State of Michigan enact:

257.675d Authorizing and utilizing persons other than police officers to issue citations; training program; definitions.

Sec. 675d. (1) A law enforcement agency or a local unit of government may implement and administer a program to authorize and utilize persons other than police officers as volunteers to issue citations as described in sections 742 and 743 for the violations described in section 674(1)(s), 674(1)(t), or 674(1)(aa) or a local ordinance substantially corresponding

to section 674(1)(s), 674(1)(t), or 674(1)(aa). Before authorizing and utilizing persons other than police officers to issue citations, the law enforcement agency or local unit of government shall implement a program to train the persons to properly issue citations as provided in this section. A person who successfully completes a program of training implemented pursuant to this section may issue citations as provided in this section as authorized by the law enforcement agency or local unit of government. A law enforcement agency of a local unit of government shall not implement or administer a program under this section without the specific authorization of the governing body of that local unit of government.

(2) As used in this section:

(a) "Law enforcement agency" means a police agency of a city, village, or township; a sheriff's department; the department of state police; or any other governmental law enforcement agency in this state.

(b) "Local unit of government" means a state university or college, county, city, village, or township.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

[No. 50]

(HB 5279)

AN ACT to amend 1986 PA 182, entitled "An act to provide for the Michigan department of state police retirement system; to create certain reserves and certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of the department of state police, the department of management and budget, and certain state officers; and to repeal certain acts and parts of acts," by amending sections 3, 14, 14a, 42, and 43 (MCL 38.1603, 38.1614, 38.1614a, 38.1642, and 38.1643), sections 3 and 14 as amended by 2000 PA 374, section 14a as added by 1995 PA 192, section 42 as amended by 1989 PA 191, and section 43 as amended by 2002 PA 96.

The People of the State of Michigan enact:

38.1603 Definitions; B to L.

Sec. 3. (1) "Banked leave time program" means the part B annual leave hours within the state's annual and sick leave program approved by a ruling of the internal revenue service on September 5, 2003, in which a pay reduction or other concessions are applied to a member in exchange for additional part B annual leave hours.

(2) "Credited service" means the sum of the prior service and membership service credited to a member's account.

(3) "Deferred member" means a member who separates from service with entitlement to a deferred retirement allowance as provided in section 30, but who is not a retirant.

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

(5) "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

(6) "Distributee" includes a member or deferred member. Distributee also includes the member's or deferred member's surviving spouse or the member's or deferred member's spouse or former spouse under an eligible domestic relations order, with regard to the interest of the spouse or former spouse.

(7) "Drop participant" means an officer who participates in the deferred retirement option plan established in section 24a.

(8) Beginning January 1, 2002, except as otherwise provided in this subsection, "eligible retirement plan" means an individual retirement account described in section 408(a) of the internal revenue code, 26 USC 408(a), an individual retirement annuity described in section 408(b) of the internal revenue code, 26 USC 408(b), an annuity plan described in section 403(a) of the internal revenue code, 26 USC 403(a), or a qualified trust described in section 401(a) of the internal revenue code, 26 USC 401(a), an annuity contract described in section 403(b) of the internal revenue code, 26 USC 403(b), or an eligible plan under section 457(b) of the internal revenue code, 26 USC 457(b), which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such eligible plan under section 457(b) of the internal revenue code, 26 USC 457(b), from this retirement system, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse on or before December 31, 2001, an eligible retirement plan means an individual retirement account or an individual retirement annuity described above.

(9) Beginning January 1, 2002, "eligible rollover distribution" means a distribution of all or any portion of the balance to the credit of the distributee. Eligible rollover distribution does not include any of the following:

(a) A distribution made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary.

(b) A distribution for a specified period of 10 years or more.

(c) A distribution to the extent that the distribution is required under section 401(a)(9) of the internal revenue code, 26 USC 401(a)(9).

(d) The portion of any distribution that is not includable in federal gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities, except to the extent that the portion of the distribution is paid to either of the following:

(*i*) An individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, 26 USC 408(a) or 408(b).

(*ii*) A qualified defined contribution plan as described in section 401(a) or 403(a) of the internal revenue code, 26 USC 401(a) or 403(a), that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable.

(10) "Final average compensation" means the average annual salary for the last 2 years of service with the department of state police for which the member was compensated as defined in subsection (13). In the case of a nonclassified member of the department holding the rank of colonel, final average compensation means the same average annual salary as that computed for the highest salaried classified member of the department, or at the average annual salary for the last 2 years of service with the department of state police for which the member was compensated, whichever is greater. Average annual salary includes only the following compensation items:

(a) Regular salary paid for the last 2 years of service, including, but not limited to, that salary that is deferred pursuant to a state deferred compensation program.

(b) Overtime, shift differential, and shift differential overtime paid for the last 2 years of service.

(c) Gross pay adjustments paid affecting the last 2 years of service, including compensatory time and emergency response compensation.

(d) Up to a maximum of 240 hours of accumulated annual leave, paid at the time of retirement separation excluding part B annual leave hours paid at the time of retirement separation.

(e) Deferred hours under Plan B of the fiscal years ending September 30, 1981, and September 30, 1982, that are paid at the time of retirement separation.

(f) Longevity pay equal to 2 full years.

(g) Bomb squad pay paid for the last 2 years of service.

(h) Post 29 freeway premium paid for the last 2 years of service.

(i) On-call pay paid for the last 2 years of service.

(j) Beginning October 1, 2003, the value of any unpaid furlough hours or the value of any unpaid hours exchanged for part B annual leave hours, calculated at the member's then-current hourly rate or rates of pay, for a period during which a member is participating in the banked leave time program.

(11) "Furlough hours" means unworked hours incurred in conjunction with the banked leave time program.

(12) "Internal revenue code" means the United States internal revenue code of 1986.

(13) "Last 2 years of service" means the 2-year period immediately preceding the member's last day of service or that period of 2 consecutive years of service with the department of state police immediately preceding the date the duty disability occurred according to the medical examinations conducted pursuant to section 29 or, if the officer participated in the deferred retirement option plan, the 2-year period immediately preceding participation in the deferred retirement option plan.

38.1614 Funding objective of retirement system; annual level percentage of payroll contribution rate; submission of differences to legislature for appropriation; allocation and deposit of funds.

Sec. 14. (1) The funding objective of the retirement system is to establish and receive contributions during each fiscal year that are sufficient to fully cover the actuarial cost of benefits likely to be paid on account of services rendered by members during the fiscal year, the normal cost requirements of the retirement system, and finance the unfunded actuarial costs of benefits likely to be paid on account of service rendered prior to the fiscal year, the unfunded actuarial accrued liability of the retirement system, and health, dental, and vision insurance.

(2) The annual level percentage of payroll contribution rate shall be actuarially determined using experience assumptions and level percent of payroll actuarial cost methods adopted by the retirement board and the department pursuant to an annual actuarial valuation, which shall be sufficient to finance benefits being provided and to be provided by the retirement system.

(3) For differences occurring in fiscal years beginning on or after October 1, 2001, a minimum of 20% of the difference between the estimated and the actual aggregate compensation and the estimated and the actual contribution rate described in subsection (2), if any, may be submitted in the executive budget to the legislature for appropriation in the next succeeding state fiscal year and a minimum of 25% of the remaining difference

shall be submitted in the executive budget to the legislature for appropriation in each of the following 4 state fiscal years, or until 100% of the remaining difference is submitted, whichever first occurs. In addition, interest shall be included for each year that a portion of the remaining difference is carried forward. The interest rate shall equal the actuarially assumed rate of investment return for the state fiscal year in which payment is made.

(4) For each fiscal year that begins on or after October 1, 2003, if the actuarial valuation prepared pursuant to this section for each fiscal year demonstrates that as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions exceeds the actuarial present value of benefits, the amount based on the annual level percent of payroll contribution rate pursuant to subsections (1) and (2) may be deposited into the health advance funding subaccount created by section 42.

(5) Notwithstanding any other provision of this act, if the retirement board establishes an arrangement and fund as described in section 6 of the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1686, the benefits that are required to be paid from that fund shall be paid from a portion of the employer contributions described in this section or other eligible funds. The retirement board shall determine the amount of the employer contributions or other eligible funds that must be allocated to that fund and deposit that amount in that fund before it deposits any remaining employer contributions or other eligible funds in the pension fund.

38.1614a Intent; retirement system as qualified pension plan and trust as exempt organization; administration; employer-financed benefit limitation; use and investment of assets; return of post-tax member contributions; beginning date of distributions; termination of retirement system; election to rollover to retirement plan; qualified military service.

Sec. 14a. (1) This section is enacted pursuant to section 401(a) of the internal revenue code that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) The retirement system shall be administered in compliance with section 415 of the internal revenue code, 26 USC 415, and regulations under that section that are applicable to governmental plans. Employer-financed benefits provided by the retirement system under this act shall not exceed the applicable limitations set forth in section 415 of the internal revenue code, 26 USC 415, as adjusted by the commissioner of internal revenue under section 415(d) of the internal revenue code, 26 USC 415(d), to reflect cost of living increases, and the retirement system shall adjust the benefits subject to the limitation each calendar year to conform with the adjusted limitation. For purposes of section 415(b) of the internal revenue code, 26 USC 415(b), the applicable limitation shall apply to aggregated benefits received from all qualified pension plans for which the office of retirement services coordinates administration of that limitation. If there is a conflict between this section and another section of this act, this section prevails.

(3) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, deferred members, retirants, and beneficiaries before satisfaction of all retirement system liabilities.

(4) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(5) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(6) If the retirement system is terminated, the interest of the members, deferred members, retirants, and beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code, 26 USC 411(d)(3), and related internal revenue service regulations applicable to governmental plans.

(7) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

(8) Notwithstanding any other provision of this act, the compensation of a member of the retirement system shall be taken into account for any year under the retirement system only to the extent that it does not exceed the compensation limit established in section 401(a)(17) of the internal revenue code, 26 USC 401(a)(17), as adjusted by the commissioner of internal revenue. This subsection applies to any person who first becomes a member of the retirement system on or after October 1, 1996.

(9) Notwithstanding any other provision of this act, contributions, benefits, and service credit with respect to qualified military service will be provided under the retirement system in accordance with section 414(u) of the internal revenue code, 26 USC 414(u). This subsection applies to all qualified military service on or after December 12, 1994.

38.1642 Payment of hospitalization and medical, dental, and vision coverage insurance premiums; creation and function of health-dental-vision benefits fund; health advance funding subaccount; transfer of funds.

Sec. 42. (1) Hospitalization and medical coverage insurance premiums payable by a retirant or his or her retirement allowance beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department shall be paid in amounts provided by this subsection from appropriations for this purpose made to the retirement system. Until October 1, 1989, the amount payable by the retirement system shall be 90% of the entire monthly premium payable for hospitalization and medical coverage insurance. Beginning October 1, 1989, the amount payable by the retirement system shall be 95% of the entire monthly premium payable for hospitalization and medical coverage insurance.

(2) Effective October 1, 1989, dental coverage and vision coverage insurance premiums payable by a retirant or his or her retirement allowance beneficiary and his or her dependents under any group health plan authorized by the Michigan civil service commission and the department shall be paid in amounts provided by this subsection from appropriations for this purpose made to the retirement system. The amount payable by the retirement system shall be 90% of the entire monthly premium payable for dental coverage and vision coverage insurance.

(3) The health-dental-vision benefits fund is created and shall be the fund into which appropriations of the state for health, dental, and vision benefits are paid. Benefits payable pursuant to subsections (1) and (2) shall be payable from the health-dental-vision benefits fund. The assets and any earnings on the assets contained in the health-dental-vision benefits fund and the health advance funding subaccount are not to be treated as pension assets for any purpose.

(4) The health advance funding subaccount is the account to which amounts transferred pursuant to section 14(3) are credited. Any amounts received from the health advance funding subaccount and accumulated earnings on those amounts shall not be expended until the actuarial accrued liability for health benefits under this section is at least 100% funded. The department may expend funds or transfer funds to another account to expend for health benefits under this section if the actuarial accrued liability for health benefits under this section is at least 100% funded.

(5) Notwithstanding any other provision of this section, the department may transfer amounts from the health advance funding subaccount to the reserve for employer contributions created by section 16 if the actuarial valuation prepared pursuant to section 14 demonstrates that, as of the beginning of a fiscal year, and after all credits and transfers required by this act for the previous fiscal year have been made, the sum of the actuarial value of assets and the actuarial present value of future normal cost contributions does not exceed the actuarial present value of benefits.

38.1643 Right of member, retirant, or beneficiary to retirement allowance or other benefit.

Sec. 43. The right of a member, retirant, or beneficiary to a retirement allowance, deferred retirement allowance, accumulated contributions, or other benefit under this act is subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1021 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved April 1, 2004.
Filed with Secretary of State April 1, 2004.

Compiler's note: Senate Bill No. 1021, referred to in enacting section 1, was filed with the Secretary of State April 22, 2004, and became P.A. 2004, No. 83, Imd. Eff. Apr. 22, 2004.

[No. 51]

(HB 5476)

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school

teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 1535a and 1539b (MCL 380.1535a and 380.1539b), as amended by 1995 PA 289; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

380.1535a Conviction of teacher for certain crimes; notice of right to hearing; suspension of teaching certificate; summary suspension; findings for action under subsection (1) or (2); reinstatement, continued suspension, or permanent revocation of teaching certificate; effect of reversal of conviction on final appeal; notice of conviction; evidence of conviction; failure to complete hearing procedures; report; construction of section; rules; definitions.

Sec. 1535a. (1) Subject to subsection (2), if a person who holds a teaching certificate that is valid in this state has been convicted of a crime described in this subsection, within 10 working days after receiving notice of the conviction the superintendent of public instruction shall notify the person in writing that his or her teaching certificate may be suspended because of the conviction and of his or her right to a hearing before the superintendent of public instruction. The hearing shall be conducted as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the person does not avail himself or herself of this right to a hearing within 15 working days after receipt of this written notification, the teaching certificate of that person shall be suspended. If a hearing takes place, the superintendent of public instruction shall complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing. Subject to subsection (2), the superintendent of public instruction may suspend the person's teaching certificate based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(*i*) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(*ii*) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(*iii*) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(*iv*) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(*v*) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(*vi*) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(2) If a person who holds a teaching certificate that is valid in this state has been convicted of a crime described in this subsection, the superintendent of public instruction shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's teaching certificate under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, and shall subsequently provide an opportunity for a hearing as provided under that section. This subsection does not limit the superintendent of public instruction's ability to order summary suspension of a person's teaching certificate for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in the first degree, or an attempt to commit child abuse in the first degree.

(c) Cruelty, torture, or indecent exposure involving a child.

(d) A violation of section 7401(2)(a)(*i*), 7403(2)(a)(*i*), 7410, or 7416 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7410, and 333.7416.

(e) A violation of section 83, 89, 91, 145a, 316, 317, or 529 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.89, 750.91, 750.145a, 750.316, 750.317, and 750.529, or a felony violation of section 145d of the Michigan penal code, 1931 PA 328, MCL 750.145d.

(f) Any other crime listed in subsection (1), if the superintendent of public instruction determines the public health, safety, or welfare requires emergency action based on the circumstances underlying the conviction.

(3) The superintendent of public instruction after a hearing shall not take action against a person's teaching certificate under subsection (1) or (2) unless the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state. Further, the superintendent of public instruction may take action against a person's teaching certificate under subsection (1) or (2) based on a conviction that occurred before the effective date of the amendatory act that added this subsection if the superintendent of public instruction finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state.

(4) After the completion of a person's sentence, the person may request a hearing before the superintendent of public instruction on reinstatement of his or her teaching certificate. Based upon the issues and evidence presented at the hearing, the superintendent of public instruction may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate. The superintendent of public instruction shall not reinstate a person's teaching certificate unless the superintendent of public instruction finds that the person is currently fit to serve in an elementary or secondary school in this state and that reinstatement of the person's teaching certificate will not adversely affect the health, safety, and welfare of pupils.

(5) All of the following apply to a person described in this section whose conviction is reversed upon final appeal:

(a) The person's teaching certificate shall be reinstated upon his or her notification to the superintendent of public instruction of the reversal.

(b) If the suspension of the person's teaching certificate under this section was the sole cause of his or her discharge from employment, the person shall be reinstated, upon his or her notification to the appropriate local or intermediate school board of the reversal, with full rights and benefits, to the position he or she would have had if he or she had been continuously employed.

(6) Not later than 15 days after the date of the conviction, the prosecuting attorney in charge of a case in which a person who holds a teaching certificate was convicted of a crime described in subsection (1) or (2) and the court that convicted the person shall notify the superintendent of public instruction, and any public school, school district, intermediate school district, or nonpublic school in which the person is employed, of that conviction, of the name and address of the person convicted, and of the sentence imposed on the person. A prosecuting attorney in charge of a case in which a person is convicted of a crime described in subsection (1) or (2) and a court that convicts a person of a crime described in subsection (1) or (2) shall inquire whether the person holds a teaching certificate.

(7) Not later than 5 working days after receiving notification of a person's conviction from the prosecuting attorney or the court under subsection (6), the superintendent of public instruction shall request the court that convicted the person to provide a certified copy of the judgment of conviction and sentence to the superintendent of public instruction and shall pay any fees required by the court. The court shall provide this certified copy within 5 working days after receiving the request and fees under this section.

(8) If the superintendent of a school district or intermediate school district, the chief administrative officer of a nonpublic school, the president of the board of a school district or intermediate school district, or the president of the governing board of a nonpublic school is notified by a prosecuting attorney or court or learns through an authoritative source that a person who holds a teaching certificate and who is employed by the school district, intermediate school district, or nonpublic school has been convicted of a crime described in subsection (1) or (2), the superintendent, chief administrative officer, or board president shall notify the superintendent of public instruction of that conviction within 15 days after learning of the conviction.

(9) For the purposes of this section, a certified copy of the judgment of conviction and sentence is conclusive evidence of conviction of a crime described in this section. For the purposes of this section, conviction of a crime described in this section is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's teaching certificate.

(10) For any hearing under subsection (1), if the superintendent of public instruction does not complete the hearing procedures and make a final decision and order within 120 working days after receiving the request for the hearing, as required under subsection (1), the superintendent of public instruction shall submit a report detailing the reasons for the delay to the standing committees and appropriations subcommittees of the senate and house of representatives that have jurisdiction over education and education appropriations. The failure of the superintendent of public instruction to complete the hearing procedures and make a final decision and order within this 120 working day time limit, or the failure of any other official or agency to meet a time limit prescribed in this section, does not affect the validity of an action taken under this section affecting a person's teaching certificate.

(11) Beginning 3 months after the effective date of the amendatory act that added this subsection, the superintendent of public instruction shall submit to the legislature a quarterly report of all final actions he or she has taken under this section affecting a person's teaching certificate during the preceding quarter. The report shall contain at least all of the following with respect to each person whose teaching certificate has been affected:

(a) The person's name, as it appears on the teaching certificate.

(b) The school district, intermediate school district, public school academy, or nonpublic school in which the person was employed at the time of the conviction, if any.

(c) The offense for which the person was convicted and the date of the offense and date of the conviction.

(d) Whether the action taken by the superintendent of public instruction was a summary suspension, suspension due to failure to request a hearing, suspension, revocation, or reinstatement of the teaching certificate.

(12) Not later than 6 months after the effective date of the amendatory act that added this subsection, the superintendent of public instruction shall submit to the legislature an inventory report with information on all final actions taken under this section for the time period from March 30, 1988 until the effective date of the amendatory act that added this subsection. The report shall contain at least all of the information required in the quarterly report under subsection (11) with respect to each person whose teaching certificate was affected during that time period. If the superintendent of public instruction determines that the information required for the report is not available for any portion of that time period, the superintendent of public instruction shall include with the report a detailed explanation of the information that is not available and the reasons why the information is not available.

(13) This section does not do any of the following:

(a) Prohibit a person who holds a teaching certificate from seeking monetary compensation from a school board or intermediate school board if that right is available under a collective bargaining agreement or another statute.

(b) Limit the rights and powers granted to a school district or intermediate school district under a collective bargaining agreement, this act, or another statute to discipline or discharge a person who holds a teaching certificate.

(14) The superintendent of public instruction may promulgate, as necessary, rules to implement this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

380.1539b Conviction of person holding board approval for certain crimes; notice of right to hearing; suspension; summary suspension; reinstatement, continued suspension, or permanent revocation of state board approval; notice of conviction; evidence of conviction; failure to complete hearing procedures; report; construction of section; rules; definitions.

Sec. 1539b. (1) Subject to subsection (2), if a person who holds state board approval has been convicted of a crime described in this subsection, within 10 working days after receiving notice of the conviction the superintendent of public instruction shall notify the person in writing that his or her state board approval may be suspended because of the conviction and of his or her right to a hearing before the superintendent of public instruction. The hearing shall be conducted as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the person does not avail himself or herself of this right to a hearing within 15 working days after receipt of this written notification, the person's state board approval shall be suspended. If a hearing takes place, the superintendent of public instruction shall complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing. Subject to subsection (2), the superintendent of public instruction may suspend the person's state board approval, based upon the issues and evidence presented at the hearing. This subsection applies to any of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(*i*) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(*ii*) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(*iii*) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(*iv*) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(*v*) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(*vi*) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(2) If a person who holds state board approval has been convicted of a crime described in this subsection, the superintendent of public instruction shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's state board approval under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, and shall subsequently provide an opportunity for a hearing as required under that section. This subsection does not limit the superintendent of public instruction's ability to order summary suspension of a person's state board approval for a reason other than described in this subsection. This subsection applies to conviction of any of the following crimes:

(a) Criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree.

(b) Felonious assault on a child, child abuse in the first degree, or an attempt to commit child abuse in the first degree.