205.54q Sales of tangible personal property not for resale; exemption; applicability; duties of transferee; evidence of exemption; limitation.

Sec. 4q. (1) A sale of tangible personal property not for resale to the following, subject to subsection (5), is exempt from the tax under this act:

(a) A health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before July 17, 1998 signed by the administrator of the sales, use, and withholding taxes division of the department.

(b) An organization not operated for profit and exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the internal revenue code, 26 USC 501.

(2) The exemptions provided for in subsection (1) do not apply to sales of tangible personal property and sales of vehicles licensed for use on public highways, that are not used primarily to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

(3) At the time of the transfer of the tangible personal property exempt under subsection (1), the transferee shall do 1 of the following:

(a) Present the exemption ruling letter signed by the administrator of the sales, use, and withholding taxes division of the department certifying that the property is to be used or consumed in connection with the operation of the organization.

(b) Present a signed statement, on a form approved by the department, stating that the property is to be used or consumed in connection with the operation of the organization and that the organization qualifies as an exempt organization under this section. The transferee shall also provide to the transferor a copy of the federal exemption letter.

(4) The letter provided under subsection (3)(a) and the statement with the accompanying letter provided under subsection (3)(b) shall be accepted by all courts as prima facie evidence of the exemption and the statement shall provide that if the claim for tax exemption is disallowed, the transferee will reimburse the transferor for the amount of tax involved.

(5) The tangible personal property under subsection (1) is exempt only to the extent that the property is used to carry out the purposes of the organization as stated in the organization's bylaws or articles of incorporation. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

205.54r Qualified truck, trailer, or rolling stock; exemption; definitions.

Sec. 4r. (1) All of the following are exempt from the tax under this act:

(a) The product of the out-of-state usage percentage and the gross proceeds otherwise taxable under this act from the sale of a qualified truck or a trailer designed to be drawn behind a qualified truck, purchased after December 31, 1996 and before May 1, 1999 by an interstate motor carrier and used in interstate commerce.

(b) A sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce.

(2) As used in this section:

(a) "Interstate motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for

hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.

(b) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the interstate motor carrier and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the interstate motor carrier. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.

(c) "Qualified truck" means a commercial motor vehicle power unit that has 2 axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has 3 or more axles.

(d) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

205.54s Sale of investment coins and bullion; exemptions; definitions.

Sec. 4s. (1) A sale of investment coins and bullion is exempt from the tax under this act.

(2) As used in this section:

(a) "Bullion" means gold, silver, or platinum in a bulk state, where its value depends on its content rather than its form, with a purity of not less than 900 parts per 1,000.

(b) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and issued by the United States government or a foreign government with a fair market value greater than the face value of the coins.

205.54t Industrial processing equipment; exemptions; definitions.

Sec. 4t. (1) The sale of tangible personal property to the following after March 30, 1999, subject to subsection (2) are exempt from the tax under this act:

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

(d) A person, whether or not the person is an industrial processor, if the tangible personal property is 1 of the following:

(*i*) A computer used in operating industrial processing equipment.

(*ii*) Equipment used in a computer assisted manufacturing system.

(*iii*) Equipment used in a computer assisted design or engineering system integral to an industrial process.

(*iv*) A subunit or electronic assembly comprising a component in a computer integrated industrial processing system.

(*v*) Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data

transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4q.

(*vi*) Equipment used in the production of prewritten computer software or software modified or adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaptation.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Industrial processing includes the following activities:

(a) Production or assembly.

(b) Research or experimental activities.

(c) Engineering related to industrial processing.

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

(e) Planning, scheduling, supervision, or control of production or other exempt activities.

(f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

(g) Remanufacturing.

(h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

(c) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

(d) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.

(e) Fuel or energy used or consumed for an industrial processing activity.

(f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production.

(g) Office equipment, including data processing equipment, used for an industrial processing activity.

(5) Property that is not eligible for an industrial processing exemption includes the following:

(a) Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing.

(b) Office equipment, including data processing equipment used for nonindustrial processing purposes.

(c) Office furniture or office supplies.

(d) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

(f) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.

(g) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process.

(h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations.

(i) Tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage.

(j) Returnable shipping containers or materials, except as provided in subsection (4)(f).

(k) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

(6) Industrial processing does not include the following activities:

(a) Purchasing, receiving, or storage of raw materials.

(b) Sales, distribution, warehousing, shipping, or advertising activities.

(c) Administrative, accounting, or personnel services.

(d) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.

(e) Plant security, fire prevention, or medical or hospital services.

(7) As used in this section:

(a) "Industrial processing" means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) "Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

(c) "Product", as used in subdivision (e), includes, but is not limited to, a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.

(d) "Remanufacturing" means the activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

(e) "Research or experimental activity" means activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

(*i*) Ordinary testing or inspection of materials or products for quality control purposes.

(*ii*) Efficiency surveys.

(*iii*) Management surveys.

(*iv*) Market or consumer surveys.

(*v*) Advertising or promotions.

(*vi*) Research in connection with literacy, historical, or similar projects.

205.54u Extractive operation; exemptions.

Sec. 4u. (1) A sale of tangible personal property to an extractive operator for use or consumption in extractive operations is exempt from the tax under this act.

(2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purposes stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

(3) Extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes the following:

(a) Casing pipe or drive pipe.

(b) Tubing.

(c) Well-pumping equipment.

(d) Chemicals.

(e) Explosives or acids used in fracturing, acidizing, or shooting wells.

(f) Christmas trees, derricks, or other wellhead equipment.

(g) Treatment tanks.

(h) Piping, valves, or pumps used before movement or transportation of the natural resource from the production area.

(i) Chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources.

(j) Tangible personal property used or consumed in depositing tailings from hard rock mining processing.

(k) Tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

(4) The extractive operation exemption does not include the following:

(a) Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities.

(b) Tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage.

(c) Tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor shall account for and remit the tax to this state based upon the product's fair market value.

(d) Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources.

(e) Equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility.

(f) Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

(5) As used in this section:

(a) "Extractive operations" means the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations includes all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site.

(b) An extractive operator is a person who, either directly or by contract, performs extractive operations.

205.54w Nonprofit hospital or nonprofit hospital or housing; exemption in business of constructing, altering, repairing, or improving property; exemption; definitions.

Sec. 4w. (1) For taxes levied after June 30, 1999, a sale of tangible personal property to a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity qualified as exempt under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, is exempt from the tax under this act.

(2) An exemption shall not be granted under this section for any portion of property otherwise qualifying for exemption under this section if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or nonessential operation of that portion of property.

(3) As used in this section:

(a) "Nonprofit hospital" means 1 of the following:

(*i*) That portion of a building to which 1 of the following applies:

(A) Is owned or operated by an entity exempt under section 501(c)(3) of the internal revenue code, 26 USC 501, that is licensed as a hospital under part 215 of the public health code, 1978 PA 368, MCL 333.21501 to 333.21568.

(B) Is owned or operated by a governmental unit in which medical attention is provided.

(C) Is owned or operated by an entity or entities exempt under section 501(c)(2) or (3) of the internal revenue code, 26 USC 501, in which medical attention is provided.

(*ii*) That portion of real property necessary and related to a building described in subparagraph (*i*) in which medical attention is provided.

(*iii*) A county long-term medical care facility built after December 31, 1995.

(b) "Nonprofit hospital" does not include the following:

(*i*) A freestanding building or other real property of a nursing home or skilled nursing facility licensed under part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(*ii*) A hospice licensed under part 214 of the public health code, 1978 PA 368, MCL 333.21401 to 333.21421.

(*iii*) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 333.21301 to 333.21333.

(c) "Medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.

205.54x Sales to domestic air carrier; tax exemption; definition.

Sec. 4x. (1) A sale to a domestic air carrier of 1 or more of the following is exempt from the tax under this act:

(a) An aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(b) Parts and materials, excluding shop equipment or fuel, affixed or to be affixed to an aircraft that has a maximum certificated takeoff weight of at least 6,000 pounds for use solely in the transport of air cargo, passengers, or a combination of air cargo and passengers.

(2) A sale of an aircraft to a person for subsequent lease to a domestic air carrier operating under a certificate issued by the federal aviation administration under 14 CFR 121, for use solely in the regularly scheduled transport of passengers is exempt from the tax under this act.

(3) As used in this section, "domestic air carrier" is limited to entities engaged primarily in the commercial transport for hire of air cargo, passengers, or a combination of air cargo and passengers as a business activity.

205.55b Qualified athletic event; tax exemption; definition; repeal.

Sec. 5b. (1) The organizing entity of a qualified athletic event that sells corporate sponsor contracts for the event that include both taxable tangible personal property and services may exempt the retail sale of the taxable tangible personal property if all of the following criteria have been met:

(a) The organizing entity is exempt or is wholly owned by an entity exempt under section 501(c)(6) of the internal revenue code, 26 USC 501.

(b) The organizing entity provided both of the following to the department at least 180 days in advance of entering into the first corporate sponsor contract:

(*i*) Written notice of its intent to enter into corporate sponsor contracts.

(*ii*) An itemized schedule of the tangible personal property and services that will be provided under each corporate sponsor contract.

(c) The department has given written approval to the organizing entity.

(2) As used in this section, "qualified athletic event" means either of the following:

(a) A professional sporting competition in which individuals officially representing at least 2 countries or nations compete.

(b) A professional football competition in which teams compete in a postseason event to determine the league champion.

(3) This section is repealed effective January 1, 2007.

205.56 Sales tax returns; monthly filing; form; contents; transmitting return with remittance for amount of tax; remittance; electronic funds transfer; accrual of tax to state; filing returns and payment of tax for other than monthly periods; taxpayer as materialperson; due date.

Sec. 6. (1) Each taxpayer, unless otherwise provided by law or as required pursuant to subsection (2), (4), or (5), on or before the twentieth day of each month shall make out a return for the preceding month on a form prescribed by the department showing the entire amount of all sales and gross proceeds of his or her business, the allowable deductions, and the amount of tax for which he or she is liable. The taxpayer shall also transmit the return, together with a remittance for the amount of the tax, to the department on or before the twentieth day of that month.

(2) Beginning January 1, 1999, each taxpayer that had a total tax liability after subtracting the tax payments made to the secretary of state under this act or the use tax act, 1937 PA 94, MCL 205.91 to 205.111, or after subtracting the tax credits available under section 6a, in the immediately preceding calendar year of $720,000.00 or more shall remit to the department, by an electronic funds transfer method approved by the department on or before the twentieth day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less, plus a reconciliation payment equal to the difference between the tax liability determined for the immediately preceding month minus the amount of tax previously paid for that month. Additionally, the seller shall remit to the department, by an electronic funds transfer method approved by the department on or before the last day of the month, an amount equal to 50% of the taxpayer's liability under this act for the same month in the immediately preceding calendar year, or 50% of the actual liability for the month being reported, whichever is less.

(3) The tax imposed under this act shall accrue to this state on the last day of the month in which the sale is incurred.

(4) The department, if necessary to insure payment of the tax or to provide a more efficient administration, may require the filing of returns and payment of the tax for other than monthly periods.

(5) A taxpayer who is a materialperson may at the option of the taxpayer include the amount of all taxable sales and gross proceeds from materials furnished to an owner, contractor, subcontractor, repairperson, or consumer on a credit sale basis for the purpose of making an improvement to real property in his or her return in the first quarterly return due following the date in which the materialperson made the credit sale to the owner, contractor, subcontractor, repairperson, or consumer. Notwithstanding subsections (1) through (3), a materialperson may at the option of the taxpayer file quarterly returns for a credit sale only as determined by the department. As used in this subsection, "credit sale" means an extension of credit for the sale of taxable goods by a seller other than a credit card sale; and "materialperson" means a person who provides materials for the improvement of real property, who has registered with and has demonstrated to the department that he or she is primarily engaged in the sale of lumber and building material

related products to owners, contractors, subcontractors, repairpersons, or consumers, and who is authorized to file a construction lien upon real property and improvements under the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305.

(6) If a due date falls on a Saturday, Sunday, state holiday, or legal banking holiday, the taxes are due on the next succeeding business day.

205.56b Returned goods or motor vehicle; tax credit.

Sec. 6b. A taxpayer may claim a credit or refund for returned goods or a refund less an allowance for use made for a motor vehicle returned under 1986 PA 87, MCL 257.1401 to 257.1410, as certified by the manufacturer on a form provided by the department.

205.58 Consolidated returns.

Sec. 8. Any person engaging in 2 or more places in the same business or businesses taxable under this act, shall file a consolidated return covering all the business activities engaged in within this state.

205.59 Administration of tax; conflicting provisions; rules.

Sec. 9. (1) The tax imposed by this act shall be administered by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act. If the provisions of 1941 PA 122, MCL 205.1 to 205.31, the streamlined sales and use tax administration act, and this act conflict, the provisions of this act apply.

(2) The department shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

205.60 Refund by taxpayer for returned property; written notice; refund under MCL 445.360a.

Sec. 10. (1) If a taxpayer refunds or provides a credit for all or a portion of the amount of the purchase price of returned tangible personal property within the time period for returns stated in the taxpayer's refund policy or 180 days after the initial sale, whichever is sooner, the taxpayer shall also refund or provide a credit for the tax levied under this act that the taxpayer added to all or that portion of the amount of the purchase price that is refunded or credited.

(2) A cause of action against a seller for overcollected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. The purchaser shall provide in the notice sufficient information to determine the validity of the request. In matters relating to the request, a seller is presumed to have a reasonable business practice if in the collection of sales and use tax, the seller has a certified service provider or a system, including a proprietary system, certified by the department and has remitted to this state all taxes collected less any deductions, credits, or collection allowances.

(3) If a taxpayer tenders an amount to a buyer under section 10a of 1976 PA 449, MCL 445.360a, the taxpayer shall refund the tax levied under this act on the difference between the price stamped or affixed to the item and the price charged.

205.61 Motor vehicle used as partial payment; value.

Sec. 11. In a taxable sale at retail of a motor vehicle where another motor vehicle is used as partial payment of the purchase price, the value of the motor vehicle used as partial payment is that value agreed to by the parties to the sale as evidenced by the signed statement executed under section 251 of the Michigan vehicle code, 1949 PA 300, MCL 257.251.

205.62 Information to be obtained from purchaser; format; signature; record of exempt transactions; liability.

Sec. 12. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the governing board under the streamlined sales and use tax agreement.

(3) A purchaser is not required to provide a signature to claim an exemption under this act unless a paper exemption form is used.

(4) A seller shall maintain a proper record of all exempt transactions and shall provide the record if requested by the department.

(5) A seller who complies with the requirements of this section is not liable for the tax if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller fraudulently fails to collect the tax or solicits a purchaser to make an improper claim for exemption.

205.67 Records to be kept; sale to unlicensed person; failure to file return or maintain records; assessment; exemption certificate; good faith requirement; registration; exceptions; applicability of section under streamlined sales and use tax agreement.

Sec. 17. (1) A person liable for any tax imposed under this act shall keep accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from sales tax is claimed because the sale is for resale or for any of the other exemptions or deductions granted under this act, a record shall be kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the type of exemption claimed, the amount of the sale, and, if that person has a sales tax license, the sales tax license number. If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act. As used in this section, "good faith" means that the taxpayer received a completed and signed exemption certificate from the buyer. A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax imposed under this act unless the transaction is exempt under the provisions of section 4k. These records must be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law. If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for tax under this act. If the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer. For purposes of this section, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a

period of 4 years or for a period of less than 4 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

(2) For a period of not less than 30 days or more than 60 days that ends before September 1, 2000, as designated by the department, a person liable for any tax imposed under this act is exempt from the good faith requirement described in subsection (1) if that person submits to the department copies of all sales tax exemption certificates from buyers described in subsection (1).

(3) A buyer eligible to claim any of the exemptions or deductions granted under this act shall register on a form prescribed by the department. If a buyer fails to satisfy the registration requirement 6 months after either notice to register from the department or becoming eligible to claim an exemption or deduction under this act, whichever is later, the buyer is not entitled to submit an exemption certificate claiming an exemption or deduction otherwise granted by this act until the buyer registers. After the department has issued a notice to register, a nonregistered buyer shall be allowed to claim exemption in a refund claim that is filed with the department within the time permitted under section 27a of 1941 PA 122, MCL 205.27a.

(4) If all information described in subsection (1) is otherwise maintained in routine business records, the good faith exemption certificate requirement in subsection (1) does not apply to the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(5) This section does not apply if this state becomes a member of the streamlined sales and use tax agreement.

205.68 Annual inventory and purchase records; retention; tax liability; failure to file return or maintain records; tax assessment; burden of proof on taxpayer; exemption claim; blanket exemption claim; applicability of section under streamlined sales and use tax agreement.

Sec. 18. (1) A person liable for any tax imposed under this act shall keep accurate and complete beginning and annual inventory and purchase records of additions to inventory, complete daily sales records, receipts, invoices, bills of lading, and all pertinent documents in a form the department requires. If an exemption from the tax under this act is claimed by a person because the sale is for resale at retail, a record shall be kept of the sales tax license number if the person has a sales tax license. These records shall be retained for a period of 4 years after the tax imposed under this act to which the records apply is due or as otherwise provided by law.

(2) If the department considers it necessary, the department may require a person, by notice served upon that person, to make a return, render under oath certain statements, or keep certain records the department considers sufficient to show whether or not that person is liable for the tax under this act.

(3) A person knowingly making a sale of tangible personal property for the purpose of resale at retail to another person not licensed under this act is liable for the tax under this act unless the transaction is exempt under the provisions of section 4k.

(4) If the taxpayer fails to file a return or to maintain or preserve proper records as prescribed in this section, or the department has reason to believe that any records maintained or returns filed are inaccurate or incomplete and that additional taxes are due, the department may assess the amount of the tax due from the taxpayer based on information that is available or that may become available to the department. That assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer.

(5) If all the information is maintained as provided under section 12, an exemption certificate is not required for an exemption claim by the following:

(a) A person licensed by the Michigan liquor control commission as a wholesaler for purposes of sales of alcoholic liquor to another person licensed by the Michigan liquor control commission. As used in this subsection, "alcoholic liquor", "authorized distribution agent", and "wholesaler" mean those terms as defined in the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303.

(b) The Michigan liquor control commission or a person certified by the commission as an authorized distribution agent for purposes of the sale and distribution of alcoholic liquor to a person licensed by the Michigan liquor control commission.

(6) For purposes of this act, a blanket exemption claim covers all exempt transfers between the taxpayer and the buyer for a period of 4 years or for a period of less than 4 years as stated on the blanket exemption claim if that period is agreed to by the buyer and taxpayer.

(7) This section applies if this state is a member state of the streamlined sales and use tax agreement.

205.69 Sourcing sale at retail or lease or rental property.

Sec. 19. (1) For sourcing a sale at retail for taxation under this act, the following apply:

(a) If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser's designee, including the location indicated by instructions for delivery to the purchaser, known to the seller.

(c) If subdivision (a) or (b) does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

(d) If subdivisions (a) through (c) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.

(e) If subdivisions (a) through (d) do not apply or the seller has insufficient information to apply subdivisions (a) through (d), the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

(2) For sourcing the lease or rental of tangible personal property, other than property included in subsection (3) or (4), for taxation under this act, the following apply:

(a) For a lease or rental requiring recurring periodic payments, the first payment is sourced in the same manner provided for a retail sale in subsection (1). Subsequent payments shall be sourced to the primary property location for each period covered by the

payment as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at different locations such as business property that accompanies employees on business trips or service calls.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1).

(3) For sourcing the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that are not transportation equipment, the following apply:

(a) For a lease or rental requiring recurring periodic payments, each payment is sourced to the primary property location as indicated by the address of the property provided by the lessee and available to the lessor from the lessor's records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not considered altered by intermittent use at a different location.

(b) For a lease or rental not requiring recurring periodic payments, the payment is sourced in the same manner provided for a retail sale in subsection (1).

(4) The lease or rental of transportation equipment shall be sourced in the same manner provided for a retail sale in subsection (1).

(5) Subsections (2) and (3) do not affect the imposition or computation of sales tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(6) As used in this section:

(a) "Receive" and "receipt" mean 1 or more of the following but exclude possession by a shipping company on behalf of the purchaser:

(*i*) Taking possession of tangible personal property.

(*ii*) Making first use of services.

(b) "Transportation equipment" means 1 or more of the following:

(*i*) Locomotives and railcars utilized for the carriage of persons or property in interstate commerce.

(*ii*) Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses, which are registered through the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(*iii*) Aircraft operated by air carriers authorized and certificated by the United States department of transportation or other federal or foreign authority to transport air cargo or passengers in interstate or foreign commerce.

(*iv*) Containers designed for use on or component parts attached or secured to the equipment included in subparagraphs (*i*) to (*iii*).

(7) A person may deviate from the sourcing requirements under this section as provided in section 20 or 21.

205.70 Multiple points of use exemption form.

Sec. 20. (1) A business purchaser other than a holder of a direct pay permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98, that, at the time of its purchase of electronically delivered computer software, knows that the electronically delivered computer software will be concurrently available for use in more than 1 taxing jurisdiction

shall deliver to the seller at the time of purchase an MPU exemption form, which shall be prescribed by and available from the department.

(2) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis.

(3) A purchaser who delivers an MPU exemption form may use any reasonable, consistent, and uniform method of apportionment of the tax supported by the purchaser's business records as they exist at the time of consummation of the sale.

(4) The MPU exemption form remains in effect for all subsequent sales of electronically delivered computer software by the seller to the purchaser until revoked in writing. However, the apportionment may change based on the business records as they exist at the time of each subsequent sale.

(5) A business purchaser that is a holder of a direct pay permit is not required to deliver an MPU exemption form to the seller but shall apportion the tax on electronically delivered computer software using any reasonable, consistent, and uniform method supported by the purchaser's business records as they exist at the time of consummation of the sale.

(6) As used in this section, "MPU exemption form" means a multiple points of use exemption form.

205.71 Direct mail form or delivery information.

Sec. 21. (1) A purchaser of direct mail other than a holder of a direct pay permit under section 8 of the use tax act, 1937 PA 94, MCL 205.98, shall provide to the seller at the time of purchase either a direct mail form as prescribed by the department or information indicating the taxing jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of the direct mail form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser is then obligated to pay the applicable tax on a direct pay basis.

(3) A direct mail form remains in effect for all subsequent sales of direct mail by the seller to the purchaser until revoked in writing.

(4) Upon receipt of information from the purchaser indicating the taxing jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to that delivery information. In the absence of bad faith, the seller is relieved of any further obligation to collect the tax if the seller collected the tax using the delivery information provided by the purchaser.

(5) If the purchaser does not have a direct pay permit and does not provide the seller with a direct mail form or delivery information as required in subsection (1), the seller shall collect the tax in the same manner as provided in section 19. Nothing in this subsection limits a purchaser's obligation for the tax under this act.

(6) A purchaser who provides the seller with documentation of a direct pay permit is not required to provide a direct mail form or delivery information.

205.73 Advertisement; amounts added to sales prices for reimbursement purposes; brackets; tax imposed under tobacco products tax act.

Sec. 23. (1) A person engaged in the business of selling tangible personal property at retail shall not advertise or hold out to the public in any manner, directly or indirectly,

that the tax imposed under this act is not considered as an element in the price to the consumer. This act does not prohibit any taxpayer from reimbursing himself or herself by adding to the sale price any tax levied by this act.

(2) Subject to subsection (3), in determining amounts to be added to the sales prices for reimbursement purposes, the seller shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than 4 or round down to a whole cent when the third decimal place is 4 or less.

(3) The following brackets may be used through December 31, 2005 by retailers in determining amounts to be added to sales prices for reimbursement purposes:

Amount of Sale	Tax
1 cent to 10 cents	0
11 cents to 24 cents	1 cent
25 cents to 41 cents	2 cents
42 cents to 58 cents	3 cents
59 cents to 74 cents	4 cents
75 cents to 91 cents	5 cents
92 cents to 99 cents	6 cents

For $1.00 and each multiple of $1.00, 6% of the sale price.

(4) A person other than this state may not enrich himself or herself or gain any benefit from the collection or payment of the tax.

(5) A person subject to tax under this act shall not separately state on an invoice, bill of sale, or other similar document given to the purchaser the tax imposed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

Repeal of MCL 205.54c, 205.54*l*, 205.54m[1], 205.55a, 205.57, 205.57a, and 205.57b.

Enacting section 1. Sections 4c, 4*l*, 4m[1], 5a, 7, 7a, and 7b of the general sales tax act, 1933 PA 167, MCL 205.54c, 205.54*l*, 205.54m[1], 205.55a, 205.57, 205.57a, and 205.57b, are repealed.

Effective date.

Enacting section 2. This amendatory act takes effect September 1, 2004.

Conditional effective date.

Enacting section 3. 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. 5502.

(b) House Bill No. 5504.

(c) House Bill No. 5505.

This act is ordered to take immediate effect.
Approved June 28, 2004.
Filed with Secretary of State June 28, 2004.

Compiler's note: The bills referred to in enacting section 3 were enacted into law as follows:
House Bill No. 5502 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 172, Eff. Sept. 1, 2004.
House Bill No. 5504 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 174, Eff. July 1, 2004.
House Bill No. 5505 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 175, Eff. Sept. 1, 2004.

[No. 174]

(HB 5504)

AN ACT to provide for a streamlined system of sales and use tax collection; to prescribe the requirements necessary for this state to adopt a multistate agreement; to provide for a board with certain powers and duties; to provide for the registration of sellers who select a model of collection and remittance; to forgive liability of collection of sales and use taxes on past transactions for certain sellers; to assure privacy of buyers; and to prescribe certain powers and duties of state officials and state departments.

The People of the State of Michigan enact:

205.801 Short title.

Sec. 1. This act shall be known and may be cited as the "streamlined sales and use tax administration act".

205.803 Definitions.

Sec. 3. As used in this act:

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Board" means the governing board under the agreement.

(c) "Certified automated system" means computer software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e) "Department" means the department of treasury.

(f) "General sales tax act" means 1933 PA 167, MCL 205.51 to 205.78.

(g) "Member state" means a state that has entered into the agreement.

(h) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(i) "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a service is furnished.

(j) "Sales tax" means the tax levied under the general sales tax act.

(k) "Seller" means any person who sells, leases, or rents tangible personal property or services to another person.

(*l*) "Sourcing" means determining the tax situs of a transaction.

(m) "State" means any state of the United States or the District of Columbia.

(n) "Use tax" means the tax levied under the use tax act.

(o) "Use tax act" means 1937 PA 94, MCL 205.91 to 205.111.

(p) "Voluntary seller" means a seller who does not have a requirement to obtain a license or register to collect the sales or use tax for this state.

205.805 Purpose of act.

Sec. 5. This act simplifies the sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

205.807 Payment, collection, and remittance of sales and use taxes; provisions.

Sec. 7. The payment, collection, and remittance of the sales and use taxes under this act are subject to the provisions of the general sales tax act and the use tax act.

205.809 Streamlined sales and use tax agreement; powers and duties of state treasurer and department; rules.

Sec. 9. The state treasurer on behalf of this state may enter into the streamlined sales and use tax agreement with 1 or more states. The state treasurer or his or her designee may also certify and recertify this state's compliance with the agreement and take any other action reasonably necessary to participate or continue to participate under the agreement. The department may take actions reasonably required to implement the provisions of this act including, but not limited to, the promulgation of rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and regulations, and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

205.811 Controlling effect; parties to agreement; construction of act.

Sec. 11. (1) Any provision of the agreement or any application of a provision of the agreement to any person or circumstance that is inconsistent with any law of this state does not have effect.

(2) The agreement authorized by this act binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than this state is established by the law of this state and the other member states and not by the terms of the agreement.

(3) Nothing in the agreement shall be construed to limit the authority of the courts in this state. A person has all the rights, remedies, and obligations provided for in 1941 PA 122, MCL 205.1 to 205.31. A person does not have any cause of action or defense under the agreement because of this state's approval of the agreement or on the ground that the department's action or inaction is inconsistent with the agreement.

(4) A law of this state, or the application of a law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

(5) No provision of the agreement authorized by this act in whole or in part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state.

205.813 Appointment of members to board; terms; membership; representation by state delegation; voting; report; admimistration of taxes by department; participation by state delegation.

Sec. 13. (1) A state delegation of 4 representatives from this state shall be appointed to the board on July 1, 2004 according to the following:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate for a term of 2-1/2 years.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives for a term of 1-1/2 years.

(c) The state treasurer or his or her designee for a term of 2-1/2 years.

(d) The governor or his or her designee for a term of 1-1/2 years.

(2) At the end of each initial appointment, a member shall be appointed every 2 years for a 2-year term as follows:

(a) A member or former member of the senate or an employee of the senate or the senate fiscal agency appointed jointly by the majority and minority leaders of the senate.

(b) A member or former member of the house of representatives or an employee of the house of representatives or the house fiscal agency appointed jointly by the speaker and minority leader of the house of representatives.

(c) The state treasurer or his or her designee.

(d) The governor or his or her designee.

(3) The state delegation may represent this state in all meetings of the board. The state delegation shall vote on behalf of this state and represent the position of this state in all of the following coming before the board:

(a) Certify a person as a certified service provider.

(b) Certify a software program as a certified automated system.

(c) Establish 1 or more sales or use tax performance standards for multistate sellers that meet eligibility criteria set by the board and that have developed a proprietary system to determine the amount of sales and use tax due on transactions.

(d) Participate in the issue resolution process.

(e) Participate in determining the compliance of petitioning states.

(f) Any other actions necessary and proper to fulfill the purposes of the agreement.

(4) The state delegation shall report quarterly in writing to the committees responsible for reviewing tax issues in the senate and the house of representatives on the board's activities and shall recommend what state statutes are required to be amended to be substantially in compliance with the agreement. The report shall be posted on the department's website.

(5) The taxes imposed under the sales tax act and the use tax act shall be administered by the department under the provisions of those acts, 1941 PA 122, MCL 205.1 to 205.31, and this act.

(6) The state delegation may also participate as a member of the streamlined sales and use tax implementing states in all matters.

205.815 Withdrawal from membership.

Sec. 15. (1) If the state treasurer or the state legislature by resolution determines that it is in the best interest of this state, this state may withdraw from membership in the agreement. This state may withdraw from membership by submitting a notice of intent to withdraw to the governing board, the chief executive of each member state's tax agency, and the committees responsible for reviewing tax issues in the senate and the house of representatives and by posting the notice of intent on this state's website. The withdrawal will be effective on the first day of the calendar quarter that begins not less than 60 days after notice is given.

(2) This state will remain liable for its share of any financial or contractual obligations incurred by the governing board before the effective date of withdrawal. The appropriate share of those obligations shall be determined by this state and the board in good faith based on the benefits received and burdens incurred by both.

205.817 Finding of noncompliance; sanctions; expulsion.

Sec. 17. (1) If this state is found to be out of substantial compliance with the agreement, this state may be subject to sanctions, including expulsion from membership in the agreement by a 3/4 vote of the entire board not including this state.

(2) If this state is expelled from membership in the agreement or sanctioned in any manner, this state will remain liable for its share of any financial or contractual obligations incurred by the board before the effective date of expulsion. The appropriate share of those obligations shall be determined by this state and the governing board in good faith based on the benefits received and burdens incurred by both.

205.819 Registration.

Sec. 19. (1) A person may participate under the agreement only by registering in the central registration system provided for by the agreement.

(2) The department shall participate in an online registration system with other member states that allows sellers to register online. There is no registration fee or written signature required of a seller for registration under the agreement.

(3) A seller registered under the agreement is considered registered in each of the member states. A seller may also choose to register directly with other member states.

(4) A seller may cancel its registration under the agreement at any time according to the agreement. A seller who cancels its registration remains liable for remitting taxes collected to this state.

(5) By registering under the agreement, the seller agrees to be subject to the general sales tax act and use tax act and to collect and remit sales and use taxes for all taxable sales into this state.

(6) Registration of a person under the agreement and collection of sales and use taxes by that person in this state does not provide nexus with this state and shall not be used as a factor in determining nexus with this state for any tax purpose.

(7) A seller may use an agent to register for the seller under the agreement in this state.

(8) Withdrawal or revocation of this state does not relieve a seller of its responsibility to remit taxes collected on behalf of this state.

(9) A seller or certified service provider is not liable for having charged and collected an incorrect amount of sales or use tax resulting from their reliance on erroneous data provided in the taxability matrix provided for under section 31 or by the department on tax rates.

205.821 Models; selection for purposes of collecting and remitting sales and use taxes.

Sec. 21. A seller registered under the agreement may select 1 of the following models for purposes of collecting and remitting sales and use taxes under the agreement:

(a) Model 1. The seller uses a certified service provider to act as the seller's agent to perform all of the seller's sales and use tax collection functions other than the seller's obligation to remit sales or use tax on its own purchases.

(b) Model 2. The seller uses a certified automated system to perform part of the seller's sales and use tax collection functions, but the seller retains responsibility for remitting the tax.

(c) Model 3. The seller has sales in at least 5 member states, has total annual sales of $500,000,000.00 or more, has a proprietary system that calculates the amount of tax due in

each taxing jurisdiction, and has entered into a performance agreement with the member states establishing a tax performance standard for the seller. For purposes of Model 3, "seller" includes an affiliated group of sellers using the same proprietary system.

(d) Model 4. Any other system approved by the department.

205.823 Computation of tax remitted.

Sec. 23. (1) In computing the amount of tax remitted to this state, a certified service provider under Model 1 described in section 21 may take a deduction from the revenue collected under Model 1 in this state as determined by the contract between the board and that certified service provider. The deduction under this section may be based on 1 or more of the following:

(a) A base rate applicable to taxable transactions processed by the certified service provider for this state.

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller for a period not to exceed 24 months after the voluntary seller registered under the agreement.

(2) In computing the amount of tax remitted to this state, a seller who has selected Model 2 as described in section 21 may take a deduction in addition to the deductions taken under section 4 of the general sales tax act or section 4f of the use tax act for a period not to exceed 24 months after the seller registered under the agreement equal to 1 or more of the following:

(a) For all sellers, a base rate established by the board after the base rate is established for certified service providers under subsection (1).

(b) For a voluntary seller, a percentage of tax revenue generated for this state by that voluntary seller.

(3) In computing the amount of tax remitted to this state, a seller who has selected Model 3 as described in section 21 or a seller who has not selected any model described in section 21 may take the deductions under section 4 of the general sales tax act or section 4f of the use tax act. In addition, a voluntary seller who selected Model 3 or a voluntary seller who has not selected any model described in section 21 may take a deduction for a period not to exceed 24 months after the seller registered under the agreement equal to a percentage, determined by the board, of tax revenue generated for this state by that voluntary seller.

205.825 Certified service provider as seller's agent.

Sec. 25. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due to this state on all sales transactions it processes for the seller unless the seller made a material misrepresentation or committed fraud.

(2) A seller that uses a certified automated system is responsible and is liable to this state for reporting and remitting tax.

205.827 Personal identifiable information.

Sec. 27. (1) Except as provided in subsection (3), a certified service provider shall not retain or disclose the personally identifiable information of consumers. A certified service provider's system shall be designed and tested to assure the privacy of consumers by protecting their anonymity.

(2) A certified service provider shall provide clear and conspicuous notice of its information practices to consumers, including, but not limited to, what information it collects, how it collects the information, how it uses the information, how long it retains the information, and whether it discloses the information to member states.

(3) A certified service provider's retention or disclosure to member states of personally identifiable information is limited to that required to ensure the validity of exemptions claimed because of a consumer's status or intended use of the goods or services purchased.

(4) A certified service provider shall provide the necessary technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

(5) This privacy policy is subject to enforcement by the attorney general.

(6) If personally identifiable information is retained by this state for the purpose of subsection (3), in the absence of exigent circumstances, a person shall be afforded reasonable access to their own data, with a right to correct inaccurately recorded data.

(7) The agreement does not enlarge or limit this state's authority to do any of the following:

(a) Conduct audits or other reviews as provided under the agreement or this state's law.

(b) Provide records pursuant to this state's freedom of information act, disclosure laws with governmental agencies, or other regulations.

(c) Prevent, consistent with this state's law, disclosures of confidential taxpayer information.

(d) Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.

(e) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

(8) The department shall publish on the department's website this state's policy relating to the collection, use, and retention of personally identifiable information obtained from a certified service provider under subsection (3).

(9) The department shall destroy personally identifiable information obtained from a certified service provider when the information is no longer required for purposes under subsection (3).

(10) If a person other than a member state or person authorized by a member state's law or the agreement seeks to discover personally identifiable information about an individual from this state, the department shall make a reasonable and timely effort to notify that individual of the request.

(11) As used in this section, "personally identifiable information" means information that identifies a specific person.

205.829 Liability of registered seller; exceptions.

Sec. 29. (1) A seller registered under the agreement is not liable for any uncollected or nonremitted sales or use tax on transactions with purchasers in this state before the date of registration if the seller was not licensed or registered under the general sales tax act or the use tax act in this state in the 12-month period preceding the effective date of this state's participation in the agreement. The seller is also not responsible for any penalty or interest that may be due on those transactions. This subsection applies only if the seller is registered in this state within 12 months of the effective date of this state's participation in the agreement.

(2) Subsection (1) does not apply to the following:

(a) Any tax liability of the registered seller for transactions that are subject to sales or use tax in this state in which the registered seller is the purchaser.

(b) Any sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(c) Any transactions for which the seller received notice of the commencement of an audit and the audit is not finally resolved, including related administrative or judicial processes.

(3) Subsection (1) applies to the seller absent the seller's fraud or intentional misrepresentation of a material fact only if the seller continues to be registered under the agreement and continues collection and remittance of applicable sales and use taxes in this state for at least 36 months. The statute of limitations applicable to assessing a tax liability is tolled during this 36-month period.

205.831 Notification of change in rate or tax base.

Sec. 31. (1) The department shall publish on the state website a notification to sellers registered under the agreement of a change in rate or tax base within 5 business days of receiving notice of the public act number assigned by the secretary of state to the act that changes that tax rate or base or of an amendment to sales and use tax rules or regulations. Whenever possible, a rate or tax base change should occur on the first day of a calendar quarter.

(2) Failure of a seller to receive notice under subsection (1), however, does not relieve the seller of its obligation to collect the sales or use tax.

(3) The department shall complete a taxability matrix as provided for under section 328 of the agreement, maintain it in a database in a downloadable format approved by the board, and provide notice of changes in the matrix.

205.833 Business advisory group.

Sec. 33. The state delegation shall appoint a business advisory group of not more than 8 members to consult with the delegation on streamlined sales and use tax matters as requested by the delegation.

Effective date.

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

Conditional effective date.

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

(a) House Bill No. 5502.

(b) House Bill No. 5503.

(c) House Bill No. 5505.

This act is ordered to take immediate effect.
Approved June 28, 2004.
Filed with Secretary of State June 28, 2004.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
House Bill No. 5502 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 172, Eff. Sept. 1, 2004.
House Bill No. 5503 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 173, Eff. Sept. 1, 2004.
House Bill No. 5505 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 175, Eff. Sept. 1, 2004.

[No. 175]

(HB 5505)

AN ACT to impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the general sales tax act and use tax act necessary to bring those taxes into compliance with the streamlined sales tax agreement so this state may participate in the streamlined sales tax system and governing board; to prescribe certain powers and duties of certain state departments; and to provide for the disbursement of certain proceeds.

The People of the State of Michigan enact:

205.171 Short title.

Sec. 1. This act shall be known and may be cited as the "streamlined sales and use tax revenue equalization act".

205.173 Definitions.

Sec. 3. As used in this act:

(a) "Department" means the department of treasury.

(b) "Diesel fuel" means that term as defined in section 2(p) of the motor fuel tax act, 2000 PA 403, MCL 207.1002.

(c) "Interstate motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least 1 other state or Canadian province.

(d) "Person" means an individual, firm, partnership, joint venture, association, social club fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust receiver, trustee, syndicate, the United States, this state, country, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(e) "Qualified commercial motor vehicle" means that term as defined in section 1 of the motor carrier fuel tax act, 1980 PA 119, MCL 207.211.

(f) "Sales tax" means the tax levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(g) "Tax" includes all taxes, interest, or penalties levied under this act.

(h) "Taxpayer" means a person subject to tax under this act.

(i) "Use tax" means the tax levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111.

205.175 Tax on diesel fuel used by interstate motor carrier; rate; credit under international fuel tax agreement.

Sec. 5. (1) There is levied upon and there shall be collected from every person in this state who is an interstate motor carrier a specific tax for the privilege of using or consuming diesel fuel in a qualified commercial motor vehicle in this state at a cents-per-gallon rate equal to 6% of the statewide average retail price of a gallon of self-serve diesel fuel rounded down to the nearest 1/10 of a cent as determined and certified quarterly by the department. This tax on diesel fuel used by interstate motor carriers in a qualified commercial motor vehicle shall be collected under the international fuel tax agreement.

(2) An interstate motor carrier is entitled to a credit for 6% of the price of diesel fuel purchased in this state and used in a qualified commercial motor vehicle. This credit shall be claimed on the returns filed under the international fuel tax agreement.

205.179 Storing, registering, or transferring ownership of vehicle; tax; exemption; credit.

Sec. 9. (1) Except as provided in subsection (2), there is levied upon and there shall be collected from every person in this state a specific tax on the privilege of storing, registering, or transferring ownership of any vehicle other than a vehicle stored, registered, or transferred by a new or used vehicle dealer licensed by the department of state, ORV, manufactured housing, aircraft other than a qualified aircraft under section 11, snowmobile, or watercraft in this state at a rate of 6% of the retail dollar value at the time of acquisition as determined by the department of treasury. The tax shall be paid by the transferee. The tax on a vehicle, ORV, snowmobile, and watercraft shall be collected by the secretary of state before the transfer of the vehicle, ORV, snowmobile, or watercraft registration. The tax on an aircraft shall be paid to the department. The tax on manufactured housing shall be collected by the department of consumer and industry services, mobile home commission, or its agent before the transfer of the certificate of title.

(2) A transfer for purposes of resale or a transfer that is exempt under any other exemption under the use tax act is exempt from the tax levied under subsection (1). A transfer subject to tax under the general sales tax act is exempt from the tax levied under subsection (1).

(3) A credit against the tax levied under subsection (1) is allowed for an amount equal to any use tax paid by the taxpayer on the same property. The credit under this section shall not exceed the tax imposed by this act.

205.181 Storage, registration, or transfer of aircraft; tax.

Sec. 11. (1) Except as provided in subsection (2), there is levied upon and there shall be collected from every person in this state a specific tax for the privilege of storing, registering, or transferring ownership in this state of a qualified aircraft at a rate of 6% of the retail value of the aircraft at the time it first enters this state. The transferee shall pay the tax to the department. An aircraft is qualified if it was purchased outside of this state and is used solely for personal, nonbusiness purposes and if 1 of the following applies:

(a) The aircraft is purchased by a person who is not a resident of this state at the time of purchase and is brought into this state more than 90 days after the date of purchase.

(b) The aircraft is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

(2) The storage, registration, or transfer of an aircraft for purposes of resale or of an aircraft that is exempt under any other exemption under the use tax act is exempt from the tax levied under subsection (1).

(3) A credit against the tax levied under subsection (1) is allowed in an amount equal to the amount by which any use tax on the aircraft if paid exceeds the amount of the tax under this act, which shall be refunded by the department.

205.183 Charges for rooms or lodgings; tax credit.

Sec. 13. A person who paid a tax under the use tax act may calculate a credit and seek a refund from the department under this act in an amount equal to 6% of an assessment imposed under the convention and tourism marketing act, 1980 PA 383, MCL 141.881 to 141.889, 1974 PA 263, MCL 141.861 to 141.867, the state convention facility development act, 1985 PA 106, MCL 207.621 to 207.640, the regional tourism marketing act, 1989 PA 244,

MCL 141.891 to 141.900, 1991 PA 180, MCL 207.751 to 207.759, or the community convention or tourism marketing act, 1980 PA 395, MCL 141.871 to 141.880, that was added to charges for rooms or lodgings subject to tax under section 3a of the use tax act, 1937 PA 94, MCL 205.93a, but not to exceed the actual amount of use tax paid on those assessments.

205.185 Money received and refunds paid; disposition.

Sec. 15. All money received and refunds paid under the provisions of this act shall be deposited or disbursed in the following manner:

(a) Money received and refunds paid under section 5 of this act shall be deposited or disbursed in accordance with the provisions of section 9 of article IX of the state constitution of 1963.

(b) Money received and refunds paid pursuant to all other sections of this act shall be deposited or disbursed in the same manner as funds are received or paid pursuant to the use tax act.

205.187 Administration of taxes; controlling provisions.

Sec. 17. The taxes imposed by this act shall be administered by the department under 1941 PA 122, MCL 205.1 to 205.31, and this act. If 1941 PA 122, MCL 205.1 to 205.31, and this act conflict, the provisions of this act apply.

205.189 Returns; date of filing.

Sec. 19. Every person required to pay a tax to the department under this act shall file a return in a form prescribed by the department on or before the twentieth day of each month, except as otherwise provided by section 5 of this act. Taxes imposed under this act shall accrue to this state on the last day of each calendar month. To ensure payment or provide a more efficient administration, the department may require and prescribe the filing of returns and payment of the tax for other than monthly periods.

205.191 Applying credits and returns to reduce use tax.

Sec. 21. At the option of the taxpayer, the credits and refunds provided in this act may be applied to reduce the use tax due under the use tax act and the procedures implementing those use tax payment obligations.

Effective date.

Enacting section 1. This act takes effect September 1, 2004.

Conditional effective date.

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

(a) House Bill No. 5502.

(b) House Bill No. 5503.

(c) House Bill No. 5504.

This act is ordered to take immediate effect.
Approved June 28, 2004.
Filed with Secretary of State June 28, 2004.

Compiler's note: The bills referred to in enacting section 2 were enacted into law as follows:
House Bill No. 5502 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 172, Eff. Sept. 1, 2004.
House Bill No. 5503 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 173, Eff. Sept. 1, 2004.
House Bill No. 5504 was filed with the Secretary of State June 28, 2004, and became P.A. 2004, No. 174, Eff. July 1, 2004.

[No. 176]

(HB 5681)

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 76505 and 76507 (MCL 324.76505 and 324.76507), as added by 1995 PA 58, and by adding section 76507a.

The People of the State of Michigan enact:

324.76505 Fort Mackinac; flag; maintenance.

Sec. 76505. The director shall see to it that the United States flag is kept floating from the flagstaff at Fort Mackinac, and rules relative thereto are the same as those that have governed in that matter when the fort was in possession and occupancy by the United States troops.

324.76507 Mackinac Island state park; operation of vehicle without permit; misdemeanor; penalty.

Sec. 76507. Except as provided in section 76504, a person who operates a motor vehicle on land within the Mackinac Island state park without a permit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both, plus the costs of prosecution.

324.76507a Damaging or removing trees, vegetation, or state property; violation; civil liability.

Sec. 76507a. (1) A person shall not cut, peel, damage, destroy, or remove a tree or other vegetation or state property located in any park or other property under the control of the commission, without written permission from the director.

(2) A person who violates subsection (1) is civilly liable to the commission in a sum equal to triple the amount of damage, destruction, or value of the property.

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

[No. 177]

(HB 5494)

AN ACT to create the Michigan law enforcement officers memorial monument fund; to establish a commission to govern the monument fund; to prescribe the purpose of the monument fund; to prescribe the powers and duties of the commission and certain state departments and officers; to provide for penalties; and to provide for dissolution of the commission and monument fund.

The People of the State of Michigan enact:

28.781 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan law enforcement officers memorial act".

28.782 Definitions.

Sec. 2. As used in this act:

(a) "Commission" means the Michigan law enforcement officers memorial monument fund commission created in section 4.

(b) "Law enforcement officer" means that term as defined in section 2 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.602.

(c) "Monument fund" means the Michigan police officers memorial monument fund created in section 3.

(d) "Survivor" means any of the following:

(*i*) A spouse of a law enforcement officer killed on duty.

(*ii*) A parent of a law enforcement officer killed on duty.

(*iii*) A sibling of a law enforcement officer killed on duty.

(*iv*) A child of a law enforcement officer killed on duty.

28.783 Michigan law enforcement officers memorial monument fund; creation as separate fund; disposition of money and interest accrued.

Sec. 3. The Michigan law enforcement officers memorial monument fund is created as a separate fund in the department of treasury. The state treasurer shall seek appropriate federal tax status for the monument fund. The state treasurer shall credit to the monument fund the money appropriated to the monument fund, money received for the monument fund under section 6, and all interest that accrues on money in the monument fund. The commission may use money in the monument fund as described in this act.

28.784 Michigan law enforcement officers memorial monument fund commission; membership; appointment; terms; vacancy; removal; meetings; business conducted at public meetings; availability of writings; reimbursement.

Sec. 4. (1) The Michigan law enforcement officers memorial monument fund commission is created as a type II agency in the department of management and budget. The commission is the governing body of the monument fund. The commission shall consist of all of the following:

(a) The state treasurer or his or her designee.

(b) The attorney general or his or her designee.

(c) Five members appointed by the governor as follows:

(*i*) One member who is a police chaplain who has 5 or more years' experience as a police chaplain.

(*ii*) One member nominated by the Michigan state troopers association who is a survivor of an officer of the Michigan state police killed while on duty.

(*iii*) One member nominated by the executive director of the sheriff's association of Michigan who is a survivor of an officer of a county sheriff's department killed while on duty.

(*iv*) One member nominated by the chief of police of a municipal police department of a municipality with a population of more than 500,000 who is a survivor of an officer of that police department killed while on duty.

(*v*) One member nominated by the executive director of the Michigan fraternal order of police who is a survivor of an officer killed while on duty who served with a municipal police department of a municipality with a population of 500,000 or less.

(2) Members of the commission appointed under subsection (1)(c) shall serve for terms of 4 years or until a successor is appointed, whichever is later. If a vacancy occurs on the commission, the vacancy shall be filled in the same manner as the original appointment. The governor may remove a member of the commission for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(3) The commission shall initially convene within 6 months after the first deposit of money in the monument fund. The commission shall meet often enough to expedite the completion of the monument as prescribed in section 5. At the first meeting, the commission shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. A majority of the members of the commission constitute a quorum for conducting business.

(4) The commission shall conduct its business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

28.785 Solicitation and selection of design; location.

Sec. 5. (1) The commission shall oversee the financing, design, and construction of a memorial monument dedicated to law enforcement officers from Michigan who died in the line of duty. The commission shall solicit designs for the monument and shall select the final design.

(2) The name of each law enforcement officer who died in the line of duty shall be inscribed on the Michigan law enforcement officers memorial monument.

(3) In consultation with the Michigan capitol park commission, the Michigan law enforcement officers memorial monument shall be located on land under the jurisdiction of the Michigan capitol park commission but shall not be located on the grounds of the state capitol.

28.786 Grants or gifts; prohibited fund-raising activities.

Sec. 6. (1) The commission may accept on behalf of the monument fund grants or gifts from the federal government, an individual, a public or private corporation, organization, or foundation, or any other source. The acceptance and use of federal funds by the commission does not commit state money and does not obligate the legislature to continue the purposes for which federal money is made available. The commission shall transmit money received under this section to the state treasurer for deposit in the monument fund.

(2) A person shall not solicit or collect money for the monument fund through the use of telemarketing.

(3) A person shall not conduct any fund-raising activities in the name of the Michigan law enforcement officers memorial monument fund without prior written approval from the Michigan law enforcement officers memorial monument fund commission.

(4) A person shall not use the name or logo of the Michigan law enforcement officers memorial monument fund or commission in any fund-raising activity without prior written approval of the commission.

(5) A person who violates subsection (2), (3), or (4) is guilty of a misdemeanor for each separate violation, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

28.787 Dissolution of commission; use of remaining funds.

Sec. 7. After the completion of construction of the monument pursuant to section 5 and payment of all amounts due in connection with the monument, the commission is dissolved. Any balance remaining in the monument fund shall be used to maintain the Michigan law enforcement officers memorial monument.

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

[No. 178]

(HB 4476)

AN ACT to provide respite care information resources; to establish a unified Michigan lifespan respite services resource network to disseminate community lifespan respite services information resources; and to prescribe the powers and duties of certain departments of this state.

The People of the State of Michigan enact:

333.26521 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan lifespan respite services resource act".

333.26522 Definitions.

Sec. 2. As used in this act:

(a) "Caregiver" means an individual providing ongoing care for an individual unable to care for himself or herself.

(b) "Department" means the department of community health.

(c) "Director" means the director of the department.

(d) "Respite care" means providing short-term relief to primary caregivers from the demands of ongoing care for an individual whose health and welfare would be jeopardized if left unattended.

333.26523 Michigan lifespan respite services resource network; establishment; purpose; duties.

Sec. 3. (1) The director shall establish the Michigan lifespan respite services resource network within the department to develop and encourage statewide coordination of respite services and to work with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups to engage in networking community lifespan respite services information resources.

(2) The Michigan lifespan respite services resource network shall do all of the following:

(a) Develop and distribute respite services information.

(b) Promote information exchange and coordination among state and local governments, community lifespan respite services programs, agencies serving individuals who need respite care, families of individuals unable to care for themselves, and respite care advocates to encourage efficient provision of respite services and reduce duplication of effort.

(c) Promote a statewide network of community lifespan respite services.

(d) Establish a respite care website and a toll-free respite care information hotline.

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

[No. 179]

(HB 5225)

AN ACT to amend 1953 PA 181, entitled "An act relative to investigations in certain instances of the causes of death within this state due to violence, negligence or other act or omission of a criminal nature or to protect public health; to provide for the taking of statements from injured persons under certain circumstances; to abolish the office of coroner and to create the office of county medical examiner in certain counties; to prescribe the powers and duties of county medical examiners; to prescribe penalties for violations of the provisions of this act; and to prescribe a referendum thereon," by amending section 5a (MCL 52.205a).

The People of the State of Michigan enact:

52.205a Sudden death, cause unknown, of child under age of 2 years; report; request for autopsy; notice of results; costs; rules.

Sec. 5a. (1) When a child under the age of 2 years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the county medical examiner or deputy county medical examiner of the county where the body is located. The county medical examiner or deputy county medical examiner shall inform the parents or legal guardians of the child that they may request an autopsy to be performed on the child. The state shall cover the costs of an autopsy requested under this section. The county medical examiner or the deputy county medical examiner shall arrange the autopsy requested under this section and shall promptly notify the parents or legal guardians of the results of that autopsy. The county

medical examiner or the deputy county medical examiner shall report the costs of the autopsy performed under this section to the director of the department of community health. If the director determines the claim to be reasonable and proper, he or she shall reimburse the person for the costs incurred under this section out of funds appropriated for this purpose by the legislature. Nothing in this section shall be construed to interfere with the duties and responsibilities of the county medical examiner or deputy county medical examiner as provided in this act.

(2) The department of community health shall promulgate rules and regulations under this act to promote consistency and accuracy among county medical examiners and deputy county medical examiners in determining the cause of death under this section. The department may adopt, by reference in its rules, all or any part of the "State of Michigan Protocols to Determine Cause and Manner of Sudden and Unexplained Child Deaths" published by the Michigan child death review program.

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

[No. 180]

(SB 625)

AN ACT to amend 1986 PA 102, entitled "An act to establish a grant program for certain part-time, independent students in this state; and to prescribe the powers and duties of certain state agencies and institutions of higher education," by amending section 3 (MCL 390.1283).

The People of the State of Michigan enact:

390.1283 Participation in grant program; eligibility.

Sec. 3. A person is eligible to participate in the grant program if he or she meets all of the following:

(a) Is a part-time student.

(b) Is an independent student.

(c) Has not been enrolled in a high school diploma program other than general educational development (GED) or adult education for at least the 2 preceding years.

(d) Is enrolled or accepted for enrollment in an undergraduate program of not less than 9 months duration leading to a degree or certificate from a Michigan degree granting educational institution that is approved by the department of labor and economic growth.

(e) Has resided continuously in this state for the immediately preceding 12 months and is not considered a resident of any other state.

(f) Is not incarcerated in a corrections institution.

(g) Has complied with this act and the rules promulgated under this act by the authority.

(h) Is a United States citizen or permanent resident.

(i) Is not enrolled in an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect.

(j) Is not in default on a loan guaranteed by the authority.

(k) Is shown by the school to be making satisfactory academic progress.

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

[No. 181]

(SB 626)

AN ACT to amend 1964 PA 208, entitled "An act to grant scholarships to students enrolled in postsecondary education institutions; and to provide for the administration of the scholarship program," by amending section 7 (MCL 390.977), as amended by 1980 PA 500.

The People of the State of Michigan enact:

390.977 Choice of institution or course of study; exception accepting or continuing enrollment; notice; reports.

Sec. 7. (1) An applicant awarded a first-year scholarship or a renewal scholarship is not restricted in the choice of the institution in this state which he or she desires to attend if the institution is an eligible postsecondary institution under rules promulgated by the Michigan higher education assistance authority, except that a student shall not use a scholarship award at an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect. An applicant awarded a first-year scholarship or a renewal scholarship is not restricted in the choice of the course of study he or she wishes to pursue.

(2) An approved institution chosen by the applicant is not required to accept the applicant for enrollment, or once having admitted the applicant, to continue the applicant's enrollment. The approved institution accepting the enrollment of a state competitive scholarship award winner shall notify the authority of the recipient's enrollment and shall submit annually to the authority reports which are required and necessary to administer this act.

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

[No. 182]

(SB 627)

AN ACT to amend 1976 PA 228, entitled "An act to provide for scholarships to high school graduates of this state; and to prescribe the powers and duties of the Michigan higher education assistance authority," by amending section 4 (MCL 390.1304), as amended by 1980 PA 386.

The People of the State of Michigan enact:

390.1304 Eligibility for scholarship.

Sec. 4. A person is eligible for a scholarship award if the person meets all of the following qualifications:

(a) Has resided in this state continuously for the preceding 12 months and is not considered a resident of any other state.

(b) Has not graduated from high school at the time of the scholarship examination.

(c) Enrolls in a recognized postsecondary educational institution within 4 years after graduation from high school.

(d) Is not enrolled in an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect.

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

[No. 183]

(SB 628)

AN ACT to amend 1986 PA 273, entitled "An act to establish a Michigan educational opportunity grant program for resident qualified students enrolled in eligible public postsecondary schools; and to prescribe the powers and duties of certain state agencies," by amending section 3 (MCL 390.1403).

The People of the State of Michigan enact:

390.1403 Eligibility of postsecondary school to participate in MEOG program; prohibition.

Sec. 3. (1) A recognized postsecondary school in this state is eligible to participate in the MEOG program under this act if the postsecondary school is a degree-granting public institution approved by the department of labor and economic growth.

(2) A grant shall not be made under this act to a student who is enrolled in an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect.

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

[No. 184]

(SB 661)

AN ACT to amend 1978 PA 105, entitled "An act to provide grants to students enrolled in independent nonprofit institutions of higher learning; and to provide for the promulgation of rules," by amending section 4 (MCL 390.1274).

The People of the State of Michigan enact:

390.1274 Eligibility for grant.

Sec. 4. A student is eligible for a grant if the student meets all of the following criteria:

(a) The student is enrolled as a full-time or part-time student at an eligible college or university as specified in section 2. In order to be eligible for a grant, a part-time student must be enrolled in at least a one-half time course of study as defined by the authority.

(b) The student is not enrolled in an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect.

(c) The student has resided in this state continuously for the preceding 12 months and is not considered a resident of any other state.

(d) The student is making satisfactory academic progress as defined by the college or university in which the student is enrolled.

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

[No. 185]

(SB 1194)

AN ACT to amend 1979 PA 94, entitled "An act to make appropriations to aid in the support of the public schools and the intermediate school districts of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to supplement the school aid fund by the levy and collection of certain taxes; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts," by amending section 11 (MCL 388.1611), as amended by 2003 PA 236.

The People of the State of Michigan enact:

388.1611 Appropriations.

Sec. 11. (1) For the fiscal year ending September 30, 2004, there is appropriated for the public schools of this state and certain other state purposes relating to education the sum of $10,962,387,100.00 from the state school aid fund established by section 11 of article IX of the state constitution of 1963 and the sum of $377,800,000.00 from the general fund. In addition, available federal funds are appropriated for each of those fiscal years.

(2) The appropriations under this section shall be allocated as provided in this act. Money appropriated under this section from the general fund shall be expended to fund the purposes of this act before the expenditure of money appropriated under this section from the state school aid fund. If the maximum amount appropriated under this section from the state school aid fund for a fiscal year exceeds the amount necessary to fully fund allocations under this act from the state school aid fund, that excess amount shall not be expended in that state fiscal year and shall not lapse to the general fund, but instead shall be deposited into the school aid stabilization fund created in section 11a.

(3) If the maximum amount appropriated under this section from the state school aid fund and the school aid stabilization fund for a fiscal year exceeds the amount available for expenditure from the state school aid fund for that fiscal year, payments under sections 11f, 11g, 22a, 31d, 51a(2), and 51c shall be made in full. In addition, for districts beginning operations after 1994-95 that qualify for payments under section 22b, payments under section 22b shall be made so that the qualifying districts receive the lesser of an amount equal to the 1994-95 foundation allowance of the district in which the district beginning operations after 1994-95 is located or $5,500.00. The amount of the payment to be made under section 22b for these qualifying districts shall be as calculated under section 22a, with the balance of the payment under section 22b being subject to the proration otherwise provided under this subsection and subsection (4). For any proration necessary after 2002-2003, state payments under each of the other sections of this act from all state funding sources shall be prorated in the manner prescribed in subsection (4) as necessary to reflect the amount available for expenditure from the state school aid fund for the affected fiscal year. However, if the department of treasury determines that proration will be required under this subsection, the department of treasury shall notify the state budget director, and the state budget director shall notify the legislature at least 30 calendar days or 6 legislative session days, whichever is more, before the department reduces any payments under this act because of the proration. During the 30 calendar day or 6 legislative session day period after that notification by the state budget director, the department shall not reduce any payments under this act because of proration under this subsection. The legislature may prevent proration from occurring by, within the 30 calendar day or 6 legislative session day period after that notification by the state budget director, enacting legislation appropriating additional funds from the general fund, countercyclical budget and economic stabilization fund, state school aid fund balance, or another source to fund the amount of the projected shortfall.

(4) For any proration necessary after 2002-2003, the department shall calculate the proration in district and intermediate district payments that is required under subsection (3) as follows:

(a) The department shall calculate the percentage of total state school aid allocated under this act for the affected fiscal year for each of the following:

(*i*) Districts.

(*ii*) Intermediate districts.

(*iii*) Entities other than districts or intermediate districts.

(b) The department shall recover a percentage of the proration amount required under subsection (3) that is equal to the percentage calculated under subdivision (a)(*i*) for districts by reducing payments to districts. This reduction shall be made by calculating an equal dollar amount per pupil as necessary to recover this percentage of the proration amount and reducing each district's total state school aid from state sources, other than payments under sections 11f, 11g, 22a, 31d, 51a(2), 51a(12), 51c, 53a, and 56, by that amount.

(c) The department shall recover a percentage of the proration amount required under subsection (3) that is equal to the percentage calculated under subdivision (a)(*ii*) for intermediate districts by reducing payments to intermediate districts. This reduction shall be made by reducing the payments to each intermediate district, other than payments under sections 11f, 11g, 22a, 31d, 51a(2), 51a(12), 51c, 53a, and 56, on an equal percentage basis.

(d) The department shall recover a percentage of the proration amount required under subsection (3) that is equal to the percentage calculated under subdivision (a)(*iii*) for

entities other than districts and intermediate districts by reducing payments to these entities. This reduction shall be made by reducing the payments to each of these entities on an equal percentage basis.

(5) Except for the allocation under section 26a, any general fund allocations under this act that are not expended by the end of the state fiscal year are transferred to the state school aid fund.

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

[No. 186]

(HB 5859)

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 3204 and 3212 (MCL 600.3204 and 600.3212), as amended by 1994 PA 397.

The People of the State of Michigan enact:

600.3204 Foreclosure by advertisement; circumstances; installments as separate and independent mortgage; redemption; chain of title.

Sec. 3204. (1) A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

(b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

600.3212 Notice of foreclosure by advertisement; contents.

Sec. 3212. Every notice of foreclosure by advertisement shall include all of the following:

(a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.

(b) The date of the mortgage and the date the mortgage was recorded.

(c) The amount claimed to be due on the mortgage on the date of the notice.

(d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.

(e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.

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

[No. 187]

(SB 988)

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 805a, 806, 806b, and 810 (MCL 339.805a, 339.806, 339.806b, and 339.810), sections 805a, 806, and 810 as amended and section 806b as added by 1995 PA 217, and by adding section 806e.

The People of the State of Michigan enact:

339.805a Applicability of article to boxing elimination contests; administration of preliminary breath test; contest not in violation of law.

Sec. 805a. (1) This article does not apply to boxing elimination contests in which all of the following apply:

(a) The contestants compete for prizes only in elimination contests and are not also professional boxers competing in 4 or more rounds of nonelimination boxing.

(b) Each bout is scheduled to consist of 3 or fewer 1-minute rounds, with contests conducted on no more than 2 consecutive calendar days.

(c) Competing contestants are prohibited from boxing for more than 12 minutes on each contest day.

(d) The contestants participating in the elimination contest are insured by the promoter for all medical and hospital expenses to be paid to the contestants to cover injuries sustained in the contest.

(e) A licensed physician is in attendance at ringside and the physician has authority to stop the contest for medical reasons.

(f) All contestants pass a physical examination given by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner before the contest.

(g) A preliminary breath test is administered to each contestant which indicates a blood alcohol content of .02% or less.

(h) The promoter conducts the elimination contest in compliance with the following:

(*i*) A contestant who has lost by a technical knockout is not permitted to compete again for a period of 30 calendar days or until the contestant has submitted to the promoter the results of a physical examination equivalent to that required of professional boxers.

(*ii*) The ringside physician examines a contestant who has been knocked out in an elimination contest or whose fight has been stopped by the referee because he or she received hard blows to the head that made him or her defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may recommend post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI), to be performed on the contestant immediately after the contestant leaves the location of the contest. The promoter shall not permit the contestant to compete until a physician has certified that the contestant is fit to compete. If the physician recommended further neurological examinations, the promoter shall not permit the contestant to compete until the promoter receives copies of examination reports demonstrating that the contestant is fit to compete.

(*iii*) The promoter shall require that a contestant who has sustained a severe injury or knockout in an elimination contest be examined by a physician. The promoter shall not permit the contestant to compete until the physician has certified that the contestant has fully recovered.

(*iv*) The promoter shall not permit a contestant to compete in an elimination contest for a period of not less than 60 days if he or she has been knocked out or has received excessive hard blows to the head that required the fight to be stopped.

(*v*) A contestant who has been knocked out twice in a period of 3 months or who has had excessive head blows causing a fight to be stopped shall not be permitted by a promoter to participate in an elimination contest for a period of not less than 120 days from the second knockout or stoppage.

(*vi*) A contestant who has been knocked out or had excessive hard blows to the head causing a fight to be stopped 3 times consecutively in a period of 12 months shall not be permitted by a promoter to participate in an elimination contest for a period of 1 year from the third knockout.

(*vii*) Before resuming competition after any of the periods of rest prescribed in subparagraphs (*iv*), (*v*), and (*vi*), a promoter shall require the contestant to produce a certification by a physician stating that the contestant is fit to take part in an elimination contest.

(2) As part of the physical examination given before the contest, the licensed physician, licensed physician's assistant, certified nurse practitioner, or other trained person shall administer a preliminary breath test in compliance with standards imposed in rules promulgated by the department of state police regarding equipment calibration and methods of administration.

(3) The promoter shall keep a log of preliminary breath test results of contestants on file at its place of business for at least 3 years after the date of administration of the test. These results shall be made available to law enforcement officials upon request.

(4) An elimination contest held pursuant to this section is not considered to be in violation of the law.

339.806 License to participate in or profit from boxing contest; application; passport; good moral character.

Sec. 806. (1) A promoter, boxing club, physician, physician's assistant, nurse practitioner, referee, judge, matchmaker, timekeeper, announcer, professional boxer, or a manager, or second of those persons shall obtain a license from the department before participating either directly or indirectly in a boxing contest.

(2) A person shall not profit directly or indirectly from a boxing contest or participate directly or indirectly in the contest or in the receipts from a contest unless that contest is licensed by the department in advance under the classifications designated in this article.

(3) Each application for a license shall be in writing, shall be verified by the applicant, and shall set forth those facts requested by and conform to the rules promulgated by the department, jointly with the board.

(4) The department shall issue a passport with each professional boxer's license.

(5) Each applicant for a license as a promoter, referee, or judge shall be of good moral character.

339.806b Licensee as judge or referee; examination; physical examination; issuance of license without examination.

Sec. 806b. (1) A person seeking a license under this article as a judge or referee may be required to satisfactorily pass an examination acceptable to the board and the department.

(2) A person seeking a license under this article as a judge, referee, or boxer shall pass a physical examination, which is performed by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner, acceptable to the board and present evidence of passage to the department.

(3) The department shall issue a license without an examination to a person who is licensed under this article on December 1, 1995 upon application on a form provided by the department.

339.806e Third party reimbursement or worker's compensation benefits not required.

Sec. 806e. This article does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

339.810 Professional boxing contest; duration; glove weight; length of rounds and rest periods; certifying contestant as being in proper physical condition.

Sec. 810. (1) A professional boxing contest shall be of not more than 10 rounds in length, except a contest which involves a national or international championship may last not more than 20 rounds in the determination of the department. The contestants shall wear during a contest gloves weighing at least 6 ounces each. Rounds shall be not longer than 3 minutes, with not less than 1-minute rest between rounds.

(2) A contestant in a professional or amateur boxing contest shall be certified to be in proper physical condition by a licensed physician, licensed physician's assistant, or certified nurse practitioner before participating in a boxing contest.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

[No. 188]

(SB 1191)

AN ACT to amend 1979 PA 152, entitled "An act to provide for the establishment and collection of fees for the regulation of certain occupations and professions, and for certain agencies and businesses; to create certain funds; and to prescribe certain powers and duties of certain state agencies and departments," by amending section 49 (MCL 338.2249), as amended by 2003 PA 87.

The People of the State of Michigan enact:

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

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

(a) Application processing fees:

(*i*) Professional boxer license and passport as follows:

(A) If paid through September 30, 2003 or after September 30, 2007 ..... 25.00

(B) Beginning October 1, 2003 through September 30, 2007 ..... 35.00

(*ii*) All other licenses as follows:

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

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

(b) License fee, per year:

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

(A) If paid through September 30, 2003 or after September 30, 2007 ..... 10.00

(B) Beginning October 1, 2003 through September 30, 2007 ..... 20.00

(*ii*) Judge, physician, physician's assistant, nurse practitioner, announcer, timekeeper as follows:

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

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

(*iii*) Boxing club as follows:

(A) If paid through September 30, 2003 or after September 30, 2007 ..... 25.00

(B) Beginning October 1, 2003 through September 30, 2007 ..... 40.00

(*iv*) Manager or matchmaker 50.00

(*v*) Amateur referee 50.00

(*vi*) Professional referee 75.00

(*vii*) Professional promoter 250.00

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

(d) Duplicate boxer passport fee as follows:

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

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

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 988 is enacted into law.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

Compiler's note: Senate Bill No. 988, referred to in enacting section 1, was filed with the Secretary of State July 8, 2004, and became P.A. 2004, No. 187, Imd. Eff. July 8, 2004.

[No. 189]

(HB 4062)

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 section 21799a (MCL 333.21799a), as amended by 2003 PA 3.

The People of the State of Michigan enact:

333.21799a Nursing home; violation; complaint; investigation; disclosure; determination; listing violation and provisions violated; copies of documents; public inspection; report of violation; penalty; request for hearing; notice of hearing; "priority complaint" defined.

Sec. 21799a. (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The person may submit the request for investigation to the department as a written complaint, or the department shall assist a person in reducing an oral request made under subsection (2) to a written complaint as provided in subsection (2). A person filing a complaint under this subsection may file the complaint on a model standardized complaint form developed and distributed by the department under section 20194(3) or file the complaint as provided by the department on the internet.

(2) The department shall provide a toll-free telephone consumer complaint line. The complaint line shall be accessible 24 hours per day and monitored at a level to ensure that each priority complaint is identified and that a response is initiated to each priority complaint within 24 hours after its receipt. The department shall establish a system for the complaint line that includes at least all of the following:

(a) An intake form that serves as a written complaint for purposes of subsections (1) and (5).

(b) The forwarding of an intake form to an investigator not later than the next business day after the complaint is identified as a priority complaint.

(c) Except for an anonymous complaint, the forwarding of a copy of the completed intake form to the complainant not later than 5 business days after it is completed.

(3) The substance of a complaint filed under subsection (1) or (2) shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home that takes place in response to the complaint.

(4) A complaint filed under subsection (1) or (2), a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a patient named in the complaint unless the complainant or patient consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If the department considers disclosure essential to the investigation, the department shall give the complainant the opportunity to withdraw the complaint before disclosure.

(5) Upon receipt of a complaint under subsection (1) or (2), the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. Subject to subsection (2), the department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(6) If, at any time, the department determines that this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been violated, the department shall list the violation and the provisions violated on the state and federal licensure and certification forms for nursing homes. The department shall consider the

violations, as evidenced by a written explanation, when it makes a licensure and certification decision or recommendation.

(7) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Subject to subsection (2), within 30 days after receipt of the complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The department shall include in the final report a copy of the original complaint. The complainant may request additional copies of the documents described in this subsection and upon receipt shall reimburse the department for the copies in accordance with established policies and procedures.

(8) The department shall make a written determination, correction notice, or warning notice concerning a complaint available for public inspection, but the department shall not disclose the name of the complainant or patient without the complainant's or patient's consent.

(9) The department shall report a violation discovered as a result of the complaint investigation procedure to persons administering sections 21799c to 21799e. The department shall assess a penalty for a violation, as prescribed by this article.

(10) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A complainant shall submit a request for a hearing in writing to the director within 30 days after the mailing of the department's findings as described in subsection (7). The department shall send notice of the time and place of the hearing to the complainant and the nursing home.

(11) As used in this section, "priority complaint" means a complaint alleging an existing situation that involves physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident that requires immediate corrective action to prevent serious injury, serious harm, serious impairment, or death of a resident while receiving care in a facility.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

[No. 190]

(HB 4127)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident

fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding section 2110b.

The People of the State of Michigan enact:

500.2110b Use of automobile repair or automobile glass repair or replacement service; unreasonable restriction prohibited; disclosure; notice to consumers; development of plan.

Sec. 2110b. (1) An automobile insurance policy and an automobile insurer and its employees, agents, and adjusters shall not unreasonably restrict an insured from using a particular person, place, shop, or entity for the providing of any automobile repair or automobile glass repair or replacement service or product covered by the policy.

(2) An automobile insurer shall disclose, prior to or at the time a claim is filed with the insurer, whether the insurer has an agreement with any repair or replacement facility to provide a repair or replacement service or product to an insured and shall inform an insured that he or she is under no obligation to use a particular repair or replacement facility.

(3) The office of financial and insurance services shall develop a plan whereby the office informs consumers of their rights regarding insurance coverage of automobile repairs, that the insurer is not required to pay more than a reasonable amount for repairs and parts, and of the insured's ability to report violations of their rights to the office of financial and insurance services through the office's toll-free telephone number or website. The plan shall be developed and submitted to the senate and house of representatives

standing committees on insurance issues not later than 6 months after the effective date of this section.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

[No. 191]

(HB 4232)

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 531 (MCL 436.1531), as amended by 2002 PA 725.

The People of the State of Michigan enact:

436.1531 Public licenses and resort licenses; on-premise escrowed licenses; limitations and quotas; additional licenses for certain establishments; license for certain events at public university; economic development factors; exceptions as to certain veterans and airports; special state census of local governmental unit; rules; availability of transferable licenses held in escrow; on-premise escrowed or quota license; issuance of available licenses; report; hotels; definitions.

Sec. 531. (1) A public license shall not be granted for the sale of alcoholic liquor for consumption on the premises in excess of 1 license for each 1,500 of population or major fraction thereof. On-premises escrowed licenses issued under this subsection may be transferred subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in a county in which the escrowed license was located. However, beginning the effective date of the amendatory act that added this sentence and until July 1, 2009, if the on-premises escrowed license was issued to a location within a city with a population of over 190,000 but under 300,000, the on-premises escrowed license shall not be transferred to an applicant whose proposed operation is located within any other local governmental unit in the county in which that city is located and, in addition, an escrowed license located within any local governmental

unit in that county is not transferable into the city with a population of over 190,000 but under 300,000. If the local governmental unit within which the former licensee's premises were located spans more than 1 county, an escrowed license is available subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in either county. If an escrowed license is activated within a local governmental unit other than that local governmental unit within which the escrowed license was originally issued, the commission shall count that activated license against the local governmental unit originally issuing the license. This quota does not bar the right of an existing licensee to renew a license or transfer the license and does not bar the right of an on-premise licensee of any class to reclassify to another class of on-premises license in a manner not in violation of law or this act, subject to the consent of the commission. The upgrading of a license resulting from a request under this subsection shall be approved by the local governmental unit having jurisdiction.

(2) In a resort area, the commission may issue 1 or more licenses for a period not to exceed 12 months without regard to a limitation because of population, but not in excess of 550, and with respect to the resort license the commission, by rule, shall define and classify resort seasons by months and may issue 1 or more licenses for resort seasons without regard to the calendar year or licensing year.

(3) In addition to the resort licenses authorized in subsection (2), the commission may issue not more than 10 additional licenses per year for the years 2003 and 2004 to establishments whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area, whose primary purpose is not for the sale of alcoholic liquor, and whose capital investment in real property, leasehold improvement, and fixtures for the premises to be licensed is $75,000.00 or more. Further, the commission shall issue 1 license under this subsection for the years 2003 and 2004 to an applicant located in a rural area that has a poverty rate, as defined by the latest decennial census, greater than the statewide average, or that is located in a rural area that has an unemployment rate higher than the statewide average for 3 of the 5 preceding years. In counties having a population of less than 50,000, as determined by the last federal decennial census or as determined pursuant to subsection (11) and subject to subsection (16) in the case of a class A hotel or a class B hotel, the commission shall not require the establishments to have dining facilities to seat more than 50 persons. The commission may cancel the license if the resort is no longer active or no longer qualifies for the license. Before January 16 of each year the commission shall transmit to the legislature a report giving details as to the number of applications received under this subsection; the number of licenses granted and to whom; the number of applications rejected and the reasons; and the number of the licenses revoked, suspended, or other disciplinary action taken and against whom and the grounds for revocation, suspension, or disciplinary action.

(4) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1) and the resort licenses authorized in subsections (2) and (3), the commission may issue not more than 20 resort economic development licenses per year for the years 2003 and 2004. A person is eligible to apply for a resort economic development license under this subsection upon submitting an application to the commission and demonstrating all of the following:

(a) The establishment's business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area.

(b) The establishment's primary business is not the sale of alcoholic liquor.

(c) The capital investment in real property, leasehold improvement, fixtures, and inventory for the premises to be licensed is in excess of $1,500,000.00.

(d) The establishment does not allow or permit casino gambling on the premises.

(5) In governmental units having a population of 50,000 persons or less, as determined by the last federal decennial census or as determined pursuant to subsection (11), in which the quota of specially designated distributor licenses, as provided by section 533, has been exhausted, the commission may issue not more than a total of 10 additional specially designated distributor licenses per year for the years 2003 and 2004 to established merchants whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area. A specially designated distributor license issued pursuant to this subsection may be issued at a location within 2,640 feet of existing specially designated distributor license locations. A specially designated distributor license issued pursuant to this subsection shall not bar another specially designated distributor licensee from transferring location to within 2,640 feet of said licensed location. A specially designated distributor license issued pursuant to section 533 may be located within 2,640 feet of a specially designated distributor license issued pursuant to this subsection.

(6) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1), and the resort or resort economic development licenses authorized in subsections (2), (3), and (4), and notwithstanding section 519, the commission may issue not more than 5 additional special purpose licenses in any calendar year for the sale of beer and wine for consumption on the premises. A special purpose license issued pursuant to this subsection shall be issued only for events which are to be held from May 1 to September 30, are artistic in nature, and which are to be held on the campus of a public university with an enrollment of 30,000 or more students. A special purpose license shall be valid for 30 days or for the duration of the event for which it is issued, whichever is less. The fee for a special purpose license shall be $50.00. A special purpose license may be issued only to a corporation which is all of the following:

(a) Is a nonprofit corporation organized pursuant to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(b) Has a board of directors constituted of members of whom half are elected by the public university at which the event is scheduled and half are elected by the local governmental unit.

(c) Has been in continuous existence for not less than 6 years.

(7) Notwithstanding the local legislative body approval provision of section 501(2) and notwithstanding the provisions of section 519, the commission may issue, without regard to the quota provisions of subsection (1) and with the approval of the governing board of the university, either a tavern or class C license which may be used only for regularly scheduled events at a public university's established outdoor program or festival at a facility on the campus of a public university having a head count enrollment of 10,000 students or more. A license issued under this subsection may only be issued to the governing board of a public university, a person that is the lessee or concessionaire of the governing board of the university, or both. A license issued under this subsection is not transferable as to ownership or location. A license issued under this subsection may not be issued at an outdoor stadium customarily used for intercollegiate athletic events.

(8) In issuing a resort or resort economic development license under subsection (3), (4), or (5), the commission shall consider economic development factors of the area in the issuance of licenses to establishments designed to stimulate and promote the resort and

tourist industry. The commission shall not transfer a resort or resort economic development license issued under subsection (3), (4), or (5) to another location. If the licensee goes out of business the license shall be surrendered to the commission.

(9) The limitations and quotas of this section are not applicable to the issuance of a new license to a veteran of the armed forces of the United States who was honorably discharged or released under honorable conditions from the armed forces of the United States and who had by forced sale disposed of a similar license within 90 days before or after entering or while serving in the armed forces of the United States, as a part of the person's preparation for that service if the application for a new license is submitted for the same governmental unit in which the previous license was issued and within 60 days after the discharge of the applicant from the armed forces of the United States.

(10) The limitations and quotas of this section shall not be applicable to the issuance of a new license or the renewal of an existing license where the property or establishment to be licensed is situated in or on land on which an airport owned by a county or in which a county has an interest is situated.

(11) For purposes of implementing this section a special state census of a local governmental unit may be taken at the expense of the local governmental unit by the federal bureau of census or the secretary of state under section 6 of the home rule city act, 1909 PA 279, MCL 117.6. The special census shall be initiated by resolution of the governing body of the local governmental unit involved. The secretary of state may promulgate additional rules necessary for implementing this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) Before granting an approval as required in section 501(2) for a license to be issued under subsection (2), (3), or (4), a local legislative body shall disclose the availability of transferable licenses held in escrow for more than 1 licensing year within that respective local governmental unit. Public notice of the meeting to consider the granting of the license by the local governmental unit shall be made 2 weeks before the meeting.

(13) The person signing the application for an on-premise resort or resort economic development license shall state and verify that he or she attempted to secure an on-premise escrowed license or quota license and that, to the best of his or her knowledge, an on-premise escrowed license or quota license is not readily available within the county in which the applicant for the on-premise resort or resort economic development license proposes to operate, except that until July 1, 2009, and in the case involving a city with a population of over 190,000 but under 300,000 that verification is not required.

(14) The commission shall not issue an on-premise resort or resort economic development license if the county within which the resort or resort economic development license applicant proposes to operate has not issued all on-premise licenses available under subsection (1) or if an on-premise escrowed license exists and is readily available within the local governmental unit in which the applicant for the on-premise resort or resort economic development license proposes to operate, except until July 1, 2009, in the case involving a city with a population of over 190,000 but under 300,000. The commission may waive the provisions of this subsection upon a showing of good cause.

(15) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(16) The commission shall not require a class A hotel or a class B hotel licensed pursuant to subsection (2), (3), or (4) to provide food service to registered guests or to the public.

(17) Subject to the limitation and quotas of subsection (1) and to local legislative approval under section 501(2), the commission may approve the transfer of ownership and

location of an on-premises escrowed license within the same county to a class G-1 or class G-2 license or may approve the reclassification of an existing on-premises license at the location to be licensed to a class G-1 license or to a class G-2 license, subject to subsection (1). Resort or economic development on-premises licenses created under subsection (3) or (4) may not be issued as, or reclassified to, a class G-1 or class G-2 license.

(18) As used in this section:

(a) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(b) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(*i*) The fair market value of the license, if determinable.

(*ii*) The size and scope of the proposed operation.

(*iii*) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4930 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

Compiler's note: House Bill No. 4930, referred to in enacting section 1, was filed with the Secretary of State July 8, 2004, and became P.A. 2004, No. 192, Imd. Eff. July 8, 2004.

[No. 192]

(HB 4930)

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 515 (MCL 436.1515).

The People of the State of Michigan enact:

436.1515 Class "C" license or tavern license for certain golf courses; transfer of license to another location prohibited; surrender of license.

Sec. 515. (1) The commission may issue in a county with a population of 1,000,000 or more, without regard to the quota provisions of section 531, a class C license for a golf course that is owned by a county, city, village, or township and is open to the public.

(2) The commission may issue in a county with a population of between 500,000 and 700,000, without regard to the quota provisions of section 531, 1 tavern license for a golf course that is owned by a city with a population of over 190,000 but under 300,000 and is open to the public.

(3) The commission shall not transfer a license issued under this section to another location. If a licensee who receives a license under this section goes out of business, the license issued under this section shall be surrendered to the commission.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4232 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 8, 2004.
Filed with Secretary of State July 8, 2004.

Compiler's note: House Bill No. 4232, referred to in enacting section 1, was filed with the Secretary of State July 8, 2004 and became P.A. 2004, No. 191, Imd. Eff. July 8, 2004.

[No. 193]

(HB 4769)

AN ACT to amend 1939 PA 280, entitled "An act to protect the welfare of the people of this state; to provide general assistance, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to prescribe certain duties of certain other state departments, officers, and agencies; to make an appropriation; to prescribe penalties for the violation of the provisions of this act; and to repeal certain parts of this act on specific dates," by amending sections 115b, 115f, 115g, and 117e (MCL 400.115b, 400.115f, 400.115g, and 400.117e), section 115b as amended by 1998 PA 516, sections 115f and 115g as amended by 2002 PA 648, and section 117e as amended by 1983 PA 222.