(6) If the attorney general has reason to believe that a person has violated this act, the attorney general may investigate the business transactions of that person. The attorney general may require that person to appear, at a reasonable time and place, to give information under oath and to produce such documents and evidence necessary to determine whether the person is in compliance with the requirements of this act.

(7) Any civil penalties collected by the attorney general under this section shall be credited to the attorney general for the costs of investigating, enforcing, and defending this act and section 5a of 1979 PA 53, MCL 752.795a.

(8) This section takes effect July 1, 2005.

Conditional effective date.

Enacting section 1. This act does not take effect unless House Bill No. 5979 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 21, 2004.
Filed with Secretary of State July 21, 2004.

Compiler's note: House Bill No. 5979, referred to in enacting section 1, was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 242, Imd. Eff. July 21, 2004.

[No. 242]

(HB 5979)

AN ACT to amend 1979 PA 53, entitled "An act to prohibit access to computers, computer systems, and computer networks for certain fraudulent purposes; to prohibit intentional and unauthorized access, alteration, damage, and destruction of computers, computer systems, computer networks, computer software programs, and data; and to prescribe penalties," (MCL 752.791 to 752.797) by amending the title and by adding sections 5a, 6a, and 6b.

The People of the State of Michigan enact:

TITLE

An act to prohibit access to computers, computer systems, and computer networks for certain fraudulent purposes; to prohibit intentional and unauthorized access, alteration, damage, and destruction of computers, computer systems, computer networks, computer software programs, and data; to prohibit the sending of certain electronic messages; and to prescribe penalties.

752.795a Michigan children's protection registry act; violation.

Sec. 5a. A violation of the Michigan children's protection registry act is a violation of this act.

752.796a Violation of MCL 752.795a; penalties; exception; defense; burden of proof; effective date of section.

Sec. 6a. (1) A person who violates section 5a is guilty of the following:

(a) For the first violation, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $10,000.00, or both.

(b) For the second violation, a felony punishable by imprisonment for not more than 2 years or a fine of not more than $20,000.00, or both.

(c) For the third and any subsequent violation, a felony punishable by imprisonment for not more than 3 years or a fine of not more than $30,000.00, or both.

(2) A person does not violate section 5a because the person is an intermediary between the sender and recipient in the transmission of an electronic message that violates section 5a or unknowingly provides transmission of electronic messages over the person's computer network or facilities that violate section 5a.

(3) It is a defense to an action brought under this section that the communication was transmitted accidentally. The burden of proving that the communication was transmitted accidentally is on the sender.

(4) This section does not take effect until July 1, 2005.

752.796b Money, income, and property subject to seizure and forfeiture.

Sec. 6b. All money and other income, including all proceeds earned but not yet received by a defendant from a third party as a result of the defendant's violations of this act, and all computer equipment, all computer software, and all personal property used in connection with any violation of this act known by the owner to have been used in violation of this act are subject to lawful seizure and forfeiture in the same manner as provided under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1025 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 21, 2004.
Filed with Secretary of State July 21, 2004.

Compiler's note: Senate Bill No. 1025, referred to in enacting section 1, was filed with the Secretary of State July 21, 2004, and became P.A. 2004, No. 241, Imd. Eff. July 21, 2004.

[No. 243]

(HB 5598)

AN ACT to amend 1936 (Ex Sess) PA 1, entitled "An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations,

decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 43 (MCL 421.43), as amended by 2000 PA 490.

The People of the State of Michigan enact:

421.43 Services excluded from term "employment."

Sec. 43. Except as otherwise provided in section 42(6), the term "employment" does not include any of the following:

(a) Agricultural service performed by an individual who is an alien admitted to the United States to perform that service according to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, 8 USC 1184 and 8 USC 1101.

(b) Service performed in the employ of another state or its political subdivisions, or of an instrumentality of another state or its political subdivisions, except as otherwise provided in section 42(9); and service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act. However, to the extent that the congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, this act applies to the instrumentalities and to services performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services. If this state is not certified for any year by the appropriate agency of the United States under section 3304(c) of the federal unemployment tax act, chapter 23 of subtitle C of the internal revenue code of 1986, 26 USC 3304, the payments required of the instrumentalities with respect to the year shall be refunded by the commission from the fund in the same manner and within the same period as provided in section 16 with respect to contributions erroneously collected.

(c) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress. However, the commission shall enter into agreements with the proper agencies under the act of congress, which agreements take effect 10 days after publication of the agreements in the manner provided in section 4 for regulations to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under the act of congress, or who have, after acquiring potential rights to unemployment compensation under the act of congress, acquired rights to benefits under this act.

(d) Agricultural labor. As used in this subdivision, "agricultural labor" includes all of the following:

(*i*) Service performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(*ii*) Service performed in the employ of the owner, tenant, or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm.

(*iii*) Service performed in connection with the production or harvesting of a commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, 12 USC 1141j, in connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(*iv*) Service performed in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, to market, or to a carrier for transportation to market, in its unmanufactured state, an agricultural or horticultural commodity, if the operator produced more than 1/2 of the commodity for which the service is performed.

(*v*) Service performed in the employ of a group of operators of farms or a cooperative organization of which the operators are members, in the performance of service described in subparagraph (*iv*), but only if the operators produced more than 1/2 of the commodity for which the services are performed.

(*vi*) Service performed on a farm operated for profit if the service is not in the course of the employer's trade or business.

(*vii*) Subparagraphs (*iv*) and (*v*) do not apply to service performed in connection with commercial canning or commercial freezing or in connection with an agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(*viii*) As used in this subdivision, "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, nurseries, ranges, and greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(*ix*) Agricultural labor is not excluded from the term employment if the labor is performed for an employer as defined in section 41(5).

(e) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority not operated for profit. Domestic service is not excluded from the term "employment" if performed for an employer as defined in section 41(6).

(f) Service as an officer or member of a crew of an American vessel performed on or in connection with the vessel, except a vessel of less than 200 horsepower, if the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed, and controlled is without this state; and service performed by an individual in or as an officer or member of the crew of a vessel while it is engaged in the catching, taking, or harvesting of any kind of fish including service performed by an individual as an ordinary incident to that activity, except service performed on or in connection with a vessel of more than 10 net tons determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

(g) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child less than 18 years of age in the employ of the child's parent.

(h) Service performed by real estate salespersons, sales representatives of investment companies, and agents or solicitors of insurance companies who are compensated principally or wholly on a commission basis.

(i) Service performed within this state by an individual who is not a citizen of the United States or service performed within this state for an employer other than an American employer as defined in section 42(12)(d), if the service is incidental to the individual's service in a foreign country in which the base of operation is maintained or from which the service is directed or controlled.

(j) Service covered by an arrangement between the commission and the agency charged with the administration of another state or federal unemployment compensation law under which all service performed by an individual for an employing unit during the period covered by the employing unit's approved election. Service described in this subdivision is considered to be performed entirely within the agency's state or under federal law.

(k) Service performed by an individual in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) of the internal revenue code of 1986, 26 USC 501, other than an organization described in section 401(a) of the internal revenue code of 1986, 26 USC 401, or under section 521 of the internal revenue code of 1986, 26 USC 521, if the remuneration earned is less than $50.00.

(*l*) Service performed in the employ of a school, college, or university, if the service is performed by any of the following:

(*i*) By a person who is primarily a student at the school, college, or university. For the purpose of this subparagraph, a person is considered to be "primarily a student" if the individual is enrolled in an institution, is pursuing a course of study for academic credit, and while enrolled normally works 30 hours or less per week for the institution.

(*ii*) By a spouse of a student, if given written notice at the start of the service that the employment is under a program to provide financial assistance to the student and that the employment will not be covered by a program of unemployment compensation.

(m) Service performed by an individual less than 22 years of age who is enrolled, at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at the institution, which program combines academic instruction with work experience, if the service is an integral part of the program and the institution has certified that fact to the employer. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers.

(n) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital as defined in section 53(1).

(o) For purposes of section 42(8), (9), and (10), "employment" does not apply to service performed in any of the following situations:

(*i*) In the employ of a church or a convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.

(*ii*) By an ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by the order.

(*iii*) Before January 1, 1978, in the employ of a school that is not an institution of higher education and which service is also excluded from the term "employment" as defined in section 3306(c)(8) of the federal unemployment tax act, chapter 23 of the internal revenue code of 1986, 26 USC 3306. After December 31, 1977, in the employ of a governmental entity as defined in section 50a, if the service is performed by an individual in any of the following capacities:

(A) As an elected official.

(B) As a member of a legislative body or of the judiciary.

(C) As a military employee of the state national guard or air national guard.

(D) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

(E) In a position that, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than 8 hours per week.

(*iv*) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or of providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market.

(*v*) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision of a state by an individual receiving the work relief or work training.

(*vi*) By an inmate of a custodial or penal institution.

(*vii*) By an individual hired by a state department or recipient governmental entity through a summer youth employment program established under the Michigan youth corps act, 1983 PA 69, MCL 409.221 to 409.229, or an individual hired by a state department through a summer youth employment program administered by the department of natural resources or the department of transportation.

(p) Service performed by an individual less than 18 years of age in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to a point for subsequent delivery or distribution.

(q) Service performed for an employing unit other than a governmental entity or nonprofit organization and that is any of the following:

(*i*) Service performed by an individual while the individual was a minor student regularly attending either a public or a private school below the college level and the individual's employment during the week was any of the following:

(A) Less than the scheduled hours the individual would have worked in the department or establishment in which the employment occurred if the individual were not a student.

(B) Within the customary vacation days or vacation periods of the school, following which the individual actually returns to school.

(C) With an employer as a formal and accredited part of the regular curriculum of the individual's school.

(*ii*) Service performed by a college student of any age, but only if the student's employment is a formal and accredited part of the regular curriculum of the school.

(*iii*) Service performed by an individual as a member of a band or orchestra, but only if the service does not represent the principal occupation of the individual.

(r) Subject to subdivision (s), services performed as a direct seller, if the person is engaged in either of the following:

(*i*) The trade or business of selling, or soliciting the sale of, consumer products or services to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis that the commission or the U.S. department of labor designates by rule or regulation, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment.

(*ii*) The trade or business of selling, or soliciting the sale of, consumer products or services in the home or otherwise than in a permanent retail establishment.

(s) The exclusion of services under subdivision (r) applies only if both of the following are met:

(*i*) Substantially all the cash or other remuneration, for the performance of the services described in subdivision (r) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(*ii*) The services are performed according to a written contract that provides that the person performing the services will not be treated as an employee with respect to those services for federal tax purposes.

(t) Service performed by an individual as a product demonstrator or product merchandiser if the service is performed under a written contract between the individual and a person whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties for product demonstration and product merchandising purposes, and both in contract and in fact, the individual meets all of the following conditions:

(*i*) Is not treated as an employee with respect to those services for federal unemployment tax purposes.

(*ii*) Is compensated for each job, or the compensation is based on factors that relate to the work performed.

(*iii*) Determines the method of performing the service.

(*iv*) Provides the equipment used to perform the service.

(*v*) Is responsible for the completion of a specific job and is liable for any failure to complete the job.

(*vi*) Pays all expenses, and the opportunity for profit or loss rests solely with the individual.

(*vii*) Is responsible for operating costs, fuel, repairs, supplies, and motor vehicle insurance.

(*viii*) As used in this subdivision:

(A) "Product demonstrator" means an individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise directly employed by the manufacturer, distributor, or retailer.

(B) "Product merchandiser" means an individual who, on a temporary, part-time basis, builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor, or retailer.

(C) "Third party" means a manufacturer or broker.

(u) Service performed in an Americorps program but only if both of the following conditions are met:

(*i*) The individual performed the service under a contract or agreement providing for a guaranteed stipend opportunity.

(*ii*) The individual received the full amount of the guaranteed stipend before the ending date of the contract or agreement.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 244]

(HB 5824)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," (MCL 211.1 to 211.157) by adding section 9j.

The People of the State of Michigan enact:

211.9j Tax exemption for property used by qualified high-technology business in innovations center.

Sec. 9j. (1) For taxes levied after December 31, 2004, upon application for an exemption under this section by the administration of an innovations center, the governing body of a local tax collecting unit may adopt a resolution to exempt from the collection of taxes under this act all personal property that is owned or used by any qualified high-technology business located in that innovations center and all personal property that is owned or used by the administration of that innovations center. The clerk of the local tax collecting unit shall notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit shall afford the assessor and a representative of the affected taxing units an opportunity for a hearing. A copy of the resolution shall be filed with the state tax commission. The application for exemption under this section shall be in a form prescribed by the state tax commission.

(2) The administration of an innovations center may claim the exemption under subsection (1) by filing an affidavit claiming the exemption with the assessor of the local tax collecting unit. The affidavit shall be in a form prescribed by the state tax commission.

(3) As used in this section:

(a) "Certified technology park" means that term as defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.

(b) "High-technology activity" means 1 or more of the following:

(*i*) Advanced computing, which is any technology used in the design and development of any of the following:

(A) Computer hardware and software.

(B) Data communications.

(C) Information technologies.

(*ii*) Advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology.

(*iii*) Biotechnology, which is any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop microorganisms for useful purposes. Biotechnology does not include human cloning as defined in section 16274 of the public health code, 1978 PA 368, MCL 333.16274, or stem cell research with embryonic tissue.

(*iv*) Electronic device technology, which is any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

(*v*) Engineering or laboratory testing related to the development of a product.

(*vi*) Technology that assists in the assessment or prevention of threats or damage to human health or the environment, including, but not limited to, environmental cleanup technology, pollution prevention technology, or development of alternative energy sources.

(*vii*) Medical device technology, which is any technology that involves medical equipment or products other than a pharmaceutical product that has therapeutic or diagnostic value and is regulated.

(*viii*) Life science technology, which is any technology that has a medical diagnostic or treatment value, including, but not limited to, pharmaceutical products.

(*ix*) Product research and development.

(c) "Innovations center" means real property that meets all of the following conditions:

(*i*) Is a business incubator as that term is defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.

(*ii*) Is located within a single building.

(*iii*) Is primarily used to provide space and administrative assistance to 1 or more qualified high-technology businesses located within the building.

(d) "Qualified high-technology business" means a business that is either of the following:

(*i*) A business with not less than 25% of the total operating expenses of the business used for research and development as determined under generally accepted accounting principles.

(*ii*) A business whose primary business activity is high-technology activity.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 245]

(HB 5823)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," (MCL 211.1 to 211.157) by adding section 7ii.

The People of the State of Michigan enact:

211.7ii Tax exemption for property used by innovations center in certified technology park.

Sec. 7ii. (1) For taxes levied after December 31, 2004, except as otherwise provided in subsection (3), upon application for an exemption under this section by the administration of an innovations center, the governing body of a local tax collecting unit may adopt a resolution to exempt from the collection of taxes under this act all real property of that innovations center that is located in a certified technology park and that is owned or used by the administration of the innovations center. The clerk of the local tax collecting unit shall notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit shall afford the assessor and a representative of the affected taxing units an opportunity for a hearing. A copy of the resolution shall be filed with the state tax commission.

(2) The administration of an innovations center may claim the exemption under subsection (1) by filing an affidavit claiming the exemption with the assessor of the local tax collecting unit. The affidavit shall be in a form prescribed by the state tax commission.

(3) Not more than 1 innovations center located in a certified technology park is eligible for the exemption under subsection (1).

(4) As used in this section:

(a) "Certified technology park" means that term as defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.

(b) "High-technology activity" means 1 or more of the following:

(*i*) Advanced computing, which is any technology used in the design and development of any of the following:

(A) Computer hardware and software.

(B) Data communications.

(C) Information technologies.

(*ii*) Advanced materials, which are materials with engineered properties created through the development of specialized process and synthesis technology.

(*iii*) Biotechnology, which is any technology that uses living organisms, cells, macromolecules, microorganisms, or substances from living organisms to make or modify a product, improve plants or animals, or develop microorganisms for useful purposes. Biotechnology does not include human cloning as defined in section 16274 of the public health code, 1978 PA 368, MCL 333.16274, or stem cell research with embryonic tissue.

(*iv*) Electronic device technology, which is any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

(*v*) Engineering or laboratory testing related to the development of a product.

(*vi*) Technology that assists in the assessment or prevention of threats or damage to human health or the environment, including, but not limited to, environmental cleanup technology, pollution prevention technology, or development of alternative energy sources.

(*vii*) Medical device technology, which is any technology that involves medical equipment or products other than a pharmaceutical product that has therapeutic or diagnostic value and is regulated.

(*viii*) Life science technology, which is any technology that has a medical diagnostic or treatment value, including, but not limited to, pharmaceutical products.

(*ix*) Product research and development.

(c) "Innovations center" means real property that meets all of the following conditions:

(*i*) Is a business incubator as that term is defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152.

(*ii*) Is located within a single building.

(*iii*) Is primarily used to provide space and administrative assistance to 1 or more qualified high-technology businesses located within the building.

(d) "Qualified high-technology business" means a business that is either of the following:

(*i*) A business with not less than 25% of the total operating expenses of the business used for research and development as determined under generally accepted accounting principles.

(*ii*) A business whose primary business activity is high-technology activity.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 246]

(HB 4730)

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

agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 30113 (MCL 324.30113), as amended by 1995 PA 171, and by adding part 33; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

PART 33 AQUATIC NUISANCE CONTROL

324.3301 Definitions; A to D.

Sec. 3301. As used in this part:

(a) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(b) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

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

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

324.3302 Definitions; G to W.

Sec. 3302. As used in this part:

(a) "General permit" means a permit for a category of activities that the department determines will not negatively impact human health and will have no more than minimal short-term adverse impacts on the natural resources and environment.

(b) "Lake management plan" means a document that contains all of the following:

(*i*) A description of the physical, chemical, and biological attributes of a waterbody.

(*ii*) A description of the land uses surrounding a waterbody.

(*iii*) A detailed description of the historical and planned future management of the waterbody.

(c) "Violation of this part" means a violation of a provision of this part or a permit, certificate of coverage, or order issued under or rule promulgated under this part.

(d) "Waters of the state" or "waterbody" means groundwaters, lakes, ponds, rivers, streams, and wetlands and all other watercourses and waters within the jurisdiction of this state including the Great Lakes bordering this state.

324.3303 Chemical treatment of waters for aquatic nuisance control; permit or certificate of coverage required; exception; records; qualifications; authorization under part 31.

Sec. 3303. (1) Subject to subsections (2), (4), and (5), a person shall not chemically treat either of the following for purposes of aquatic nuisance control unless the person has obtained from the department an individual permit or a certificate of coverage under this part:

(a) Any waters of the state, if water is visibly present or contained in the area of impact at the time of chemical treatment.

(b) The Great Lakes or Lake St. Clair if the area of impact is exposed bottomland located below the ordinary high-water mark.

(2) Subject to subsections (3), (4), and (5), a person may chemically treat waters of the state for purposes of aquatic nuisance control without obtaining from the department an individual permit or a certificate of coverage if all of the following criteria are met:

(a) The waterbody does not have an outlet.

(b) There is no record of species on a list of endangered or threatened species referred to in part 365.

(c) The waterbody has a surface area of less than 10 acres.

(d) If the bottomlands of the waterbody are owned by more than 1 person, written permission for the proposed chemical treatment is obtained from each owner.

(e) The person posts the area of impact in the manner provided in section 3310(d).

(3) A person conducting a chemical treatment authorized under subsection (2) shall maintain any written permissions required under subsection (2) and records of treatment, including treatment date, chemicals applied, amounts applied, and a map indicating the area of impact, for 1 year from the date of each chemical treatment. The records shall be made available to the department upon request.

(4) A person shall not apply for a permit or certificate of coverage under subsection (1) or conduct a chemical treatment described in this section unless the person is 1 or more of the following:

(a) An owner of bottomland within the proposed area of impact.

(b) A lake board established under part 309 for the affected waterbody.

(c) A state or local governmental entity.

(d) A person who has written authorization to act on behalf of a person described in subdivision (a), (b), or (c).

(5) The chemical treatment of waters authorized pursuant to part 31 is not subject to this part.

324.3304 Lake management plan as part of permit application; proposal for whole lake evaluation treatment; placement of specific conditions in permit; scientific rationale for permit denial.

Sec. 3304. (1) An applicant shall provide a lake management plan as part of an application for permit, if a whole lake treatment is proposed.

(2) An applicant for a permit for a whole lake evaluation treatment may provide scientific evidence and documentation that the use of a specific pesticide, application rate, or means of application will selectively control an aquatic nuisance but not cause unacceptable impacts on native aquatic vegetation, other aquatic or terrestrial life, or human health. Such evaluation treatments include the use of fluridone at rates in excess of 6 parts per billion. The department may place special conditions in a permit issued under this subsection to require additional ambient monitoring to document possible adverse impacts on native aquatic vegetation or other aquatic life. If the department denies the application, the department shall provide to the applicant the scientific rationale for the denial, in writing.

324.3305 Registration of chemical used for aquatic nuisance control; evaluation; order to prohibit or suspend chemical use.

Sec. 3305. (1) A chemical shall not be used in waters of the state for aquatic nuisance control unless it is registered with the EPA, pursuant to section 3 of the federal

insecticide, fungicide, and rodenticide act, 7 USC 136a, and the Michigan department of agriculture, pursuant to part 83, for the aquatic nuisance control activity for which it is used.

(2) The department may conduct evaluations of the impacts and effectiveness of any chemicals that are proposed for use for aquatic nuisance control in waters of the state. This may include the issuance of permits for field assessments of the chemicals.

(3) The director, in consultation with the director of the Michigan department of agriculture, may issue an order to prohibit or suspend the use of a chemical for aquatic nuisance control if, based on substantial scientific evidence, use of the chemical causes unacceptable negative impacts to human health or the environment. The department shall not issue permits authorizing the use of such chemicals. In addition, a person shall cease the use of such chemicals upon notification by the department.

324.3306 Certificate of coverage; application fee.

Sec. 3306. (1) Until October 1, 2008, an application for a certificate of coverage under this part shall be accompanied by a fee of $75.00. Until October 1, 2008, subject to subsection (2), an application for an individual permit under this part shall be accompanied by the following fee, based on the size of the area of impact:

(a) Less than 1/2 acre, $75.00.

(b) One-half acre or more but less than 5 acres, $200.00.

(c) Five acres or more but less than 20 acres, $400.00.

(d) Twenty acres or more but less than 100 acres, $800.00.

(e) One hundred acres or more, $1,500.00.

(2) The department shall forward fees collected under this section to the state treasurer for deposit in the land and water management permit fee fund created in section 30113.

324.3307 Approval or denial of application within certain time period.

Sec. 3307. (1) The department shall either approve or deny an application for a certificate of coverage by May 1 or within 15 working days after receipt of a complete application, whichever is later. If the department denies an application for a certificate of coverage, the department shall notify the applicant, in writing, of the reasons for the denial.

(2) The department shall approve an application for a permit in whole or part and issue the permit, or shall deny the application, by May 1 or within 30 working days after receipt of a complete application, whichever is later. If the department approves the application in part or denies the application, the department shall, by the same deadline, notify the applicant, in writing, of the reasons for the partial approval or denial.

(3) If the department fails to satisfy the requirements of subsection (1) or (2) with respect to an application for a certificate of coverage or a permit, the department shall pay the applicant an amount equal to 15% of the application fee for that certificate of coverage or permit.

324.3308 Written permission from bottomland owner.

Sec. 3308. An applicant shall obtain authorization to chemically treat the proposed area of impact by obtaining written permission from each person who owns bottomlands in the

area of impact. The applicant shall maintain the written permission for 1 year from the expiration date of the permit and shall make the records available to the department upon request. Written permission from each bottomland owner is not required if the applicant is providing, or has contracted to provide, chemical treatment for either of the following:

(a) A lake board established under part 309 for the waterbody for which chemical treatment is proposed.

(b) This state or a local unit of government acting under authority of state law to conduct lake improvement projects or to control aquatic vegetation.

324.3309 Information included in permit; additional conditions.

Sec. 3309. (1) A permit under this part shall, at a minimum, include all of the following information:

(a) The active ingredient or the trade name of each chemical to be applied.

(b) The application rate of each chemical.

(c) The maximum amount of each chemical to be applied per treatment.

(d) Minimum length of time between treatments for each chemical.

(e) A map or maps that clearly delineate the approved area of impact.

(2) The department may impose additional conditions on a permit under this part to protect the natural resources or the public health, to prevent economic loss or impairment of recreational uses, to protect nontarget organisms, or to help ensure control of the aquatic nuisance.

324.3310 Permit conditions.

Sec. 3310. As a condition of a permit under this part, the department may require the permittee to do any of the following:

(a) Notify the department not less than 2 working days in advance of chemical treatment.

(b) Proceed with chemical treatment only if a department representative is present.

(c) Allow the department or its representative to collect a sample of the chemical or chemicals used before or during any chemical treatment.

(d) Post the area of impact before chemical treatment with signs, as follows:

(*i*) Each sign shall be of a brilliant color and made of sturdy, weather-resistant material. Each sign shall be at least 8-1/2 by 11 inches and shall be attached to a supporting device with the bottom of the sign at least 12 inches above the ground surface.

(*ii*) Signs shall be posted in the following locations:

(A) Subject to sub-subparagraph (C), along the shoreline of the area of impact not more than 100 feet apart. Signs shall also be posted in riparian lands adjacent to that portion of the shoreline.

(B) Subject to sub-subparagraph (C), for an area of impact of 2 or more acres, at all access sites, boat launching areas, and private and public parks located on the waterbody in conspicuous locations, such as at the entrances, boat ramps, and bulletin boards, if permitted by managers or owners. If the access sites, launching areas, and parks are not to be treated or are not adjacent to the area of impact, then the signs shall clearly indicate the location of the area of impact.

(C) At alternative posting locations approved by the department upon a determination that the locations where signs are otherwise required to be posted are impractical or

unfeasible. The department's determination shall be based on a written request from the applicant that includes an explanation of the need for alternative posting locations and a description of the proposed alternative posting locations.

(*iii*) The department shall specify by rule the information required to be on the signs.

(e) Publish a notice in a local newspaper or make an announcement on a local radio station regarding the chemical treatment. The notice or announcement shall include all of the following information:

(*i*) The permit number.

(*ii*) The name of the waterbody.

(*iii*) A list of the chemicals to be used with corresponding water use restrictions.

(*iv*) A description of the area of impact.

(*v*) The proposed treatment dates.

(f) Apply chemicals so that swimming restrictions and fish consumption restrictions are not imposed on any Saturday, Sunday, or state-declared holiday.

(g) Take special precautions to avoid or minimize potential impacts to human health, the environment, and nontarget organisms.

(h) Notify, in writing, an owner of any waterfront property within 100 feet of the area of impact, not less than 7 days and not more than 45 days before the initial chemical treatment. However, if the owner is not the occupant of the waterfront property or the dwelling located on the property, then the owner is responsible for notifying the occupant. Written notification shall include all of the following information:

(*i*) Name, address, and telephone number of the permittee.

(*ii*) A list of chemicals proposed for use with corresponding water use restrictions.

(*iii*) Approximate treatment dates for each chemical to be used.

(i) Complete and return the treatment report form provided by the department for each treatment season.

(j) Perform lake water residue analysis to verify the chemical concentrations in the waterbody according to a frequency, timing, and methodology approved by the department.

(k) Before submitting a permit application, perform aquatic vegetation surveys according to a frequency, timing, and methodology approved by the department.

(*l*) Use chemical control methods for nuisance aquatic vegetation that are consistent with the approved vegetation management plan submitted separately or as part of a lake management plan. The department may approve modifications to the vegetation management plan upon receipt of a written request from the permittee that includes supporting documentation.

(m) Perform pretreatment monitoring of the target aquatic nuisance population according to a frequency, timing, and methodology that has been approved by the department before submittal of a permit application.

324.3311 Permit revisions.

Sec. 3311. The department may make minor revisions to a permit under this part, to minimize the impacts to the natural resources, public health, and safety, or to improve aquatic nuisance control, if the proposed revisions do not involve a change in the scope of

the project, and the permittee requests the revisions in writing. The request shall include all of the following information:

(a) The proposed changes to the permit.

(b) An explanation of the necessity for the proposed changes.

(c) Maps that clearly delineate any proposed changes to the area of impact.

(d) Additional information that would help the department reach a decision on a permit amendment.

324.3312 Rules.

Sec. 3312. The department may promulgate rules to implement this part.

324.30113 Land and water management permit fee fund.

Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

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

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

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Part 33.

(c) Part 303.

(d) Part 315.

(e) Part 323.

(f) Part 325.

(g) Part 353.

(h) Section 117 of the land division act, 1967 PA 288, MCL 560.117.

(5) The department shall process permit applications for those acts and parts of acts cited in subsection (4) under which permits are issued within 60 days after receiving a completed permit application unless the act or part specifically provides for permit application processing time limits.

(6) The department shall annually report to the legislature on both of the following:

(a) How money in the fund was expended during the previous fiscal year.

(b) For permit programs funded with money in the fund, the average length of time for department action on permit applications for each class of permits reviewed.

Repeal of MCL 333.12561, 333.12562, and 333.12563.

Enacting section 1. Sections 12561, 12562, and 12563 of the public health code, 1978 PA 368, MCL 333.12561, 333.12562, and 333.12563, are repealed.

Effective date.

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

Conditional effective date.

Enacting section 3. This amendatory act does not take effect unless House Bill No. 4729 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

Compiler's note: House Bill No. 4729, referred to in enacting section 3, was filed with the Secretary of State July 23, 2004, and became P.A. 2004, No. 247, Eff. Oct. 1, 2004.

[No. 247]

(HB 4729)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding section 3313.

The People of the State of Michigan enact:

324.3313 Violations as misdemeanors; penalty; commencement of civil action by attorney general; revocation of permit or certificate of coverage.

Sec. 3313. (1) A person who commits a violation of this part that does not result in harm to or pose a substantial threat to natural resources, the environment, or human health is guilty of a misdemeanor punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for that violation pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(2) A person who commits a violation of this part that results in harm to or poses a substantial threat to natural resources, the environment, or human health, or a corporate officer who had advance knowledge of such a violation of this part but failed to prevent the violation, is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than $1,000.00 or more than $2,500.00.

(3) A person who commits a violation described in subsection (2) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,500.00 or more than $5,000.00.

(4) A person who commits a violation of this part that results in serious harm to or poses an imminent and substantial threat to natural resources, the environment, or human

health and who knew or should have known that the violation could have such a result is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $5,000.00 or more than $10,000.00.

(5) A person who commits a violation described in subsection (4) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 2 years and shall be fined not less than $7,500.00 or more than $15,000.00.

(6) A person who knowingly makes a false statement, representation, or certification in an application for a permit or a certificate of coverage or in a report required by a permit or certificate of coverage issued under or rule promulgated under this part is guilty of a misdemeanor and shall be fined not less than $1,000.00 or more than $2,500.00.

(7) A person who commits a violation described in subsection (6) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,000.00 or more than $5,000.00.

(8) The attorney general may commence a civil action for appropriate relief for a violation of this part, including a permanent or temporary injunction restraining a violation or ordering restoration of natural resources affected by a violation and a civil fine of not more than $25,000.00. The action may be commenced in the circuit court for the county of Ingham or the county in which the violation occurred.

(9) If a person knowingly commits a violation of this part, the department may revoke a permit or certificate of coverage issued to the person under this part.

Effective date.

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

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4730 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

Compiler's note: House Bill No. 4730, referred to in enacting section 2, was filed with the Secretary of State July 23, 2004, and became P.A. 2004, Act 246, Eff. Oct. 1, 2004.

[No. 248]

(SB 832)

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," (MCL 400.1 to 400.119b) by adding section 109h.

The People of the State of Michigan enact:

400.109h Prior authorization for certain prescription drugs not required; drugs under contract between department and health maintenance organization; definitions.

Sec. 109h. (1) If the department of community health develops a prior authorization process for prescription drugs as part of the pharmaceutical services offered under the medical assistance program administered under this act, it shall not require prior authorization for the following single source brand name, generic equivalent of a multiple source brand name, or other prescription drugs:

(a) A central nervous system prescription drug that is classified as an anticonvulsant, antidepressant, antipsychotic, or a noncontrolled substance antianxiety drug in a generally accepted standard medical reference.

(b) A prescription drug that is cross-indicated for a central nervous system drug exempted under subdivision (a) as documented in a generally accepted standard medical reference.

(c) Unless the prescription drug is a controlled substance or the prescription drug is being prescribed to treat a condition that is excluded from coverage under this act, a prescription drug that is recognized in a generally accepted standard medical reference as effective in the treatment of conditions specified in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association. The department or the department's agent shall not deny a request for prior authorization of a controlled substance under this subdivision unless the department or the department's agent determines that the controlled substance or the dosage of the controlled substance being prescribed is not consistent with its licensed indications or with generally accepted medical practice as documented in a standard medical reference.

(d) A prescription drug that is recognized in a generally accepted standard medical reference for the treatment of and is being prescribed to a patient for the treatment of any of the following:

(*i*) Human immunodeficiency virus infections or the complications of the human immunodeficiency virus or acquired immunodeficiency syndrome.

(*ii*) Cancer.

(*iii*) Organ replacement therapy.

(*iv*) Epilepsy or seizure disorder.

(2) This section does not apply to drugs being provided under a contract between the department and a health maintenance organization.

(3) As used in this section:

(a) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(b) "Cross-indicated" means a drug which is used for a purpose generally held to be reasonable, appropriate, and within community standards of practice even though the use

is not included in the federal food and drug administration's approved labeled indications for that drug.

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

(d) "Prescriber" means that term as defined in section 17708 of the public health code, 1978 PA 368, MCL 333.17708.

(e) "Prescription" or "prescription drug" means that term as defined in section 17708 of the public health code, 1978 PA 368, MCL 333.17708.

(f) "Prior authorization" means a process implemented by the department of community health that conditions, delays, or denies the delivery of particular pharmaceutical services to medicaid beneficiaries upon application of predetermined criteria by the department or the department's agent for those pharmaceutical services covered by the department on a fee-for-service basis or pursuant to a contract for those services. The process may require a prescriber to verify with the department or the department's agent that the proposed medical use of a prescription drug being prescribed for a patient meets the predetermined criteria for a prescription drug that is otherwise covered under this act or require a prescriber to obtain authorization from the department or the department's agent before prescribing or dispensing a prescription drug that is not included on a preferred drug list or that is subject to special access or reimbursement restrictions.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 249]

(HB 5665)

AN ACT to amend 1984 PA 431, entitled "An act to prescribe the powers and duties of the department of management and budget; to define the authority and functions of its director and its organizational entities; to authorize the department to issue directives; to provide for the capital outlay program; to provide for the leasing, planning, constructing, maintaining, altering, renovating, demolishing, conveying of lands and facilities; to provide for centralized administrative services such as purchasing, payroll, record retention, data processing, and publishing and for access to certain services; to provide for a system of internal accounting and administrative control for certain principal departments; to provide for an internal auditor in certain principal departments; to provide for certain powers and duties of certain state officers and agencies; to codify, revise, consolidate, classify, and add to the powers, duties, and laws relative to budgeting, accounting, and the regulating of appropriations; to provide for the implementation of certain constitutional provisions; to create funds and accounts; to make appropriations; to prescribe remedies and penalties; to rescind certain executive reorganization orders; to prescribe penalties; and to repeal certain acts and parts of acts," (MCL 18.1101 to 18.1594) by adding section 261c.

The People of the State of Michigan enact:

18.1261c Wood or paper products from sustainably managed forests or procurement systems.

Sec. 261c. (1) Beginning October 1, 2006, in addition to the requirements of sections 261, 261a, and 261b, in purchasing wood or paper products the department shall give

preference to wood or paper products that derive from sustainably managed forests or procurement systems.

(2) Paper product and forest product companies purchasing raw materials from or through third parties may reasonably rely upon the representations of landowners, vendors, or brokers as to whether the raw materials derive from sustainably managed forests or procurement systems.

(3) As used in this section, "sustainably managed forests or procurement systems" means forests or procurement systems that are certified by an independent third party using 1 or more of the following certification programs:

(a) The sustainable forestry initiative/American forest and paper association.

(b) The American tree farm systems/American forest foundation.

(c) The Canadian standards associations sustainable forest management system standards.

(d) The forest stewardship council.

(e) The Pan-European forest certification.

(f) The Finnish forest certification system.

(g) The United Kingdom woodlands assurance scheme.

(h) International standards organization (ISO) standard 14001.

Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 250]

(SB 831)

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," (MCL 333.1101 to 333.25211) by adding part 97.

The People of the State of Michigan enact:

PART 97.

MICHIGAN PHARMACEUTICAL BEST PRACTICES INITIATIVE

333.9701 Definitions.

Sec. 9701. As used in this part:

(a) "Committee" means the Michigan pharmacy and therapeutics committee established by Executive Order No. 2001-8 and by section 9705.

(b) "Controlled substance" means that term as defined in section 7104.

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

(d) "Drug" means that term as defined in section 17703.

(e) "Initiative" means the pharmaceutical best practices initiative established by this part.

(f) "Medicaid" means the program of medical assistance established under title XIX of the social security act, 42 USC 1396 to 1396v.

(g) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy under article 15.

(h) "Physician" means an individual licensed by this state to engage in the practice of medicine or osteopathic medicine and surgery under article 15.

(i) "Prescriber" means a licensed dentist, a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, a licensed doctor of podiatric medicine and surgery, a licensed optometrist certified under part 174 to administer and prescribe therapeutic pharmaceutical agents, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

(j) "Prescription" means that term as defined in section 17708.

(k) "Prescription drug" means that term as defined in section 17708.

(*l*) "Type II transfer" means that term as defined in section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

333.9703 Pharmaceutical best practices initiative; implementation; prior authorization and appeal process; establishment of disease management and health management programs; hiring and retaining contractors, subcontractors, advisors, consultants, and agents; rules.

Sec. 9703. (1) The department may implement a pharmaceutical best practices initiative for the department's various health care programs to control the costs of health care, to reduce the costs of prescription drugs, and to assure continued access to pharmaceutical services at fair and reasonable prices. If implemented, the initiative shall include, but is not limited to, the establishment and maintenance of each of the following:

(a) A preferred drug list.

(b) A prior authorization and appeal process.

(2) The prior authorization and appeal process established under subsection (1) shall include the establishment of a telephone hotline for prescribers that is accessible 24 hours

per day and staffed to ensure that a response is initiated to each prior authorization request within 24 hours after its receipt and to each appeal of a prior authorization denial within 48 hours, excluding Saturday, Sunday, and legal holidays, after all necessary documentation for reconsideration is received. Each appeal for reconsideration of a previous denial for prior authorization shall be reviewed and decided by a physician.

(3) The department, in cooperation with a pharmaceutical manufacturer or its agent or another qualified contractor, may establish disease management and health management programs that may be provided, as negotiated, by the pharmaceutical manufacturer or its agent or another qualified contractor instead of a supplemental rebate for the inclusion of certain products manufactured by that pharmaceutical manufacturer on the department's preferred drug list. If the department negotiates a plan for the provision of services by the pharmaceutical manufacturer instead of a supplemental rebate as provided under this subsection, the department shall provide a written report on the effectiveness of the programs being offered and the savings incurred as a result of those programs being provided instead of supplemental rebates to the members of the house and senate appropriations subcommittees on community health.

(4) The department may hire or retain contractors, subcontractors, advisors, consultants, and agents and may enter into contracts necessary or incidental to implement this part and carry out its responsibilities and duties.

(5) The department may promulgate rules or medicaid policies to implement this part and to ensure compliance with the published medicaid bulletin that initiated this initiative.

333.9705 Transfer of Michigan pharmacy and therapeutics committee to department; appointment and composition of membership; conflict of interest; terms; vacancy; powers, duties, and responsibilities of committee; reimbursement for expenses; rules; quorum; voting; meetings.

Sec. 9705. (1) The Michigan pharmacy and therapeutics committee, established by Executive Order No. 2001-8, is transferred to the department as a type II transfer. The committee shall consist of 11 members appointed by the governor as follows:

(a) Six physicians whose practice includes patients who are eligible for medicaid. A physician appointed under this subdivision may include, but is not limited to, a physician with expertise in mental health, a physician who specializes in pediatrics, and a physician with experience in long-term care.

(b) Five pharmacists whose business includes prescriptions from individuals who are eligible for medicaid. A pharmacist appointed under this subdivision may include, but is not limited to, a pharmacist with expertise in mental health drugs, a pharmacist who specializes in pediatrics, and a pharmacist with experience in long-term care.

(2) No member of the committee shall be employed by a pharmaceutical manufacturer or have any interest directly or indirectly in the business of a pharmaceutical manufacturer which shall cause a conflict of interest. No more than 2 members appointed to the committee shall be employed by the department.

(3) Members of the committee shall serve a term of 2 years, except as otherwise provided for members currently serving on the committee on the effective date of this section. Members serving on the committee on the effective date of this section shall serve until the date on which their appointment would have expired or until October 1, 2005, whichever occurs first. A member serving on the committee on the effective date of this section whose term would have otherwise expired after October 1, 2005 may serve the remainder of his or her term if he or she meets the qualifications established under this

section. The governor shall appoint an additional number of members to the committee necessary to reach 11 members as required under this section. The governor shall designate 1 member of the committee to serve as the chairperson of the committee. This member shall serve as chairperson at the pleasure of the governor. An individual appointed to serve as a physician or pharmacist member of the committee may serve only while maintaining his or her professional license in good standing. An individual physician's or pharmacist's failure to maintain his or her professional license in good standing immediately terminates that individual's membership on the committee. One example of not maintaining a professional license in good standing is if the department imposes a sanction under article 15 on a physician or pharmacist committee member. A vacancy on the committee shall be filled in the same manner as the original appointment. An individual appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed in the same manner as the original appointment. A member may be reappointed for additional terms.

(4) The committee has the powers, duties, and responsibilities prescribed in Executive Order No. 2001-8 and shall operate pursuant to and in accordance with Executive Order No. 2001-8.

(5) Members of the committee shall serve without compensation, but shall be reimbursed for necessary travel and other expenses pursuant to the standard travel regulations of the department of management and budget.

(6) The committee may promulgate rules governing the organization, operation, and procedures of the committee. The committee shall review its policies and procedures and consider means to increase and facilitate public comment. A majority of the members serving constitute a quorum for the transaction of business. The committee shall approve a final action of the committee by a majority vote of the members. A member of the committee must be present at a meeting of the committee in order to vote. A member shall not delegate his or her responsibilities to another individual.

(7) The committee shall meet at the call of the chairperson and as otherwise provided in the rules promulgated by the committee or the department. The committee may meet at any location within this state. A meeting of the committee is subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The committee shall post a notice of the meeting on the department's website 14 days before each meeting date. By January 31 of each year, the committee shall make available the committee's regular meeting schedule and meeting locations for that year on the department's website. The committee may make inquiries, conduct studies and investigations, hold hearings, and receive comments from the public.

333.9707 Functions.

Sec. 9707. The committee shall be advisory in nature and shall assist the department with the following functions pursuant to applicable state and federal law:

(a) Advise and make recommendations to the department for the inclusion of prescription drugs on the preferred drug list based on available information regarding the known potential impact on patient care, the known potential fiscal impact on related medicaid covered services, and sound clinical evidence found in labeling, drug compendia, and peer-reviewed literature pertaining to use of the drug in the relevant population.

(b) Advise the department on issues affecting prescription drug coverage for the department's various health care programs.

(c) Recommend to the department guidelines for prescription drug coverage under the department's various health care programs.

(d) Develop a process to collect and review information about new prescription drugs. The department shall post this process and the necessary forms on the department's website.

(e) Recommend to the department strategies to improve the initiative.

333.9709 Prior authorization for drugs not on preferred drug list.

Sec. 9709. (1) Except as otherwise provided by law or in this part, a prescriber shall obtain prior authorization for drugs that are being provided to medicaid beneficiaries directly through the department on a fee for service basis or pursuant to a contract for such pharmaceutical services and that are not included on the department's preferred drug list. If the prescriber's prior authorization request is denied, the department or the department's agent shall inform the requesting prescriber of his or her option to speak to the agent's physician on duty regarding his or her request. If immediate contact with the agent's physician on duty cannot be arranged, the department or the department's agent shall inform the requesting prescriber of his or her right to request a 72-hour supply of the nonauthorized drug. If contact with the agent's physician on duty cannot be arranged within 72 hours due to a legal holiday, the requesting prescriber may request a longer supply of the nonauthorized drug.

(2) The department or the department's agent shall provide authorization for prescribed drugs that are not on its preferred drug list if any of the following are satisfied:

(a) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that the drugs are being prescribed consistent with its licensed indications, that no other drugs included on the preferred drug list, in the physician's professional opinion, would offer a comparable benefit to the patient, and that the drugs are necessary for the continued stabilization of the patient's medical condition.

(b) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that following documented failures on earlier prescription regimens, in the physician's professional opinion, no other drug or drugs included on the preferred drug list can provide a comparable benefit.

(c) The prescribing physician telephones the department's agent or certifies in writing on a form as provided by the department that no other drugs included on the preferred drug list, in the physician's professional opinion, would offer a comparable benefit to the patient and that the drugs are being prescribed to a patient for the treatment of any symptoms or side effects that are a direct result of treatment received for any of the following:

(*i*) Human immunodeficiency virus infections or the complications of the human immunodeficiency virus or acquired immunodeficiency syndrome.

(*ii*) Cancer.

(*iii*) Organ replacement therapy.

(*iv*) Epilepsy or seizure disorder.

(3) The department or the department's agent shall provide authorization for a prescribed drug that is not on its preferred drug list if each of the following is met:

(a) The prescribing physician has achieved advanced specialization training and is certified as a specialist by a specialty board that is recognized by the American osteopathic association and the council on graduate medical education or their successor organizations and provides documentation of his or her certification.

(b) The prescribing physician described in subdivision (a) telephones the department or certifies in writing each of the following:

(*i*) The prescribed drug is being prescribed consistent with its licensed indications or with generally accepted medical practice as documented in a standard medical reference.

(*ii*) The prescribed drug is being used to treat a condition that is normally treated within the prescribing physician's specialty field.

(*iii*) In the physician's professional opinion, no other drug or drugs included on the preferred drug list can provide a comparable benefit.

(4) Documentation of necessity or failures under subsection (2) or (3) may be provided by telephone, facsimile, or electronic transmission.

(5) A patient who is under a court order for a particular prescription drug before becoming a recipient of medicaid is exempt from the prior authorization process and may continue on that medication for the duration of the order.

(6) Except as otherwise provided under this subsection, a patient who is currently under medical treatment and whose condition has been stabilized under a given prescription regimen before becoming a recipient of medicaid is exempt from the prior authorization process and may continue on that medication for the current course of treatment if without that prescription regimen the patient would suffer serious health consequences. Unless a controlled substance is currently being prescribed under a patient's hospice plan of care, a continuing prescription for a controlled substance under this subsection requires prior authorization. The department or the department's agent shall not deny a request for prior authorization of a controlled substance under this subsection unless the department or the department's agent determines that the controlled substance or the dosage of the controlled substance being prescribed is not consistent with its licensed indications or with generally accepted medical practice as documented in a standard medical reference.

(7) This section does not apply to drugs being provided under a contract between the department and a health maintenance organization.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 251]

(HB 6026)

AN ACT to amend 2000 PA 146, entitled "An act to provide for the establishment of obsolete property rehabilitation districts in certain local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain facilities; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of certain local government officials; and to provide penalties," by amending section 10 (MCL 125.2790).

The People of the State of Michigan enact:

125.2790 Obsolete properties tax; amount; collection, disbursement, and assessment; payment; copy of disbursement amount; form; property located in renaissance zone; exemption of rehabilitated facility of qualified start-up business from tax collection; resolution.

Sec. 10. (1) There is levied upon every owner of a rehabilitated facility to which an obsolete property rehabilitation exemption certificate is issued a specific tax to be known as the obsolete properties tax.

(2) The amount of the obsolete properties tax, in each year, shall be determined by adding the results of both of the following calculations:

(a) Multiplying the total mills levied as ad valorem taxes for that year by all taxing units within which the rehabilitated facility is located by the taxable value of the real and personal property of the obsolete property on the December 31 immediately preceding the effective date of the obsolete property rehabilitation exemption certificate after deducting the taxable valuation of the land and of personal property other than personal property assessed pursuant to sections 8(d) and 14(6) of the general property tax act, 1893 PA 206, MCL 211.8 and 211.14, for the tax year immediately preceding the effective date of the obsolete property rehabilitation exemption certificate.

(b) Multiplying the mills levied for school operating purposes for that year under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, by the taxable value of the real and personal property of the rehabilitated facility, after deducting all of the following:

(*i*) The taxable value of the land and of the personal property other than personal property assessed pursuant to sections 8(d) and 14(6) of the general property tax act, 1893 PA 206, MCL 211.8 and 211.14.

(*ii*) The taxable value used to calculate the tax under subdivision (a).

(3) The obsolete properties tax shall be collected, disbursed, and assessed in accordance with this act.

(4) The obsolete properties tax is an annual tax, payable at the same times, in the same installments, and to the same officer or officers as taxes imposed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, are payable. Except as otherwise provided in this section, the officer or officers shall disburse the obsolete properties tax payments received by the officer or officers each year to and among this state, cities, school districts, counties, and authorities, at the same times and in the same proportions as required by law for the disbursement of taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(5) For intermediate school districts receiving state aid under sections 56, 62, and 81 of the state school aid act of 1979, 1979 PA 94, MCL 388.1656, 388.1662, and 388.1681, of the amount of obsolete property tax that would otherwise be disbursed to an intermediate school district, all or a portion, to be determined on the basis of the tax rates being utilized to compute the amount of state aid, shall be paid to the state treasury to the credit of the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(6) The amount of obsolete property tax described in subsection (2)(a) that would otherwise be disbursed to a local school district for school operating purposes, and all of the amount described in subsection (2)(b), shall be paid instead to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(7) The officer or officers shall send a copy of the amount of disbursement made to each unit under this section to the commission on a form provided by the commission.

(8) A rehabilitated facility located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is exempt from the obsolete properties tax levied under this act to the extent and for the duration provided pursuant to the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, except for that portion of the obsolete properties tax attributable to a special assessment or a tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff. The

obsolete properties tax calculated under this subsection shall be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff.

(9) Upon application for an exemption under this subsection by a qualified start-up business, the governing body of a local tax collecting unit may adopt a resolution to exempt a rehabilitated facility of a qualified start-up business from the collection of the obsolete properties tax levied under this act in the same manner and under the same terms and conditions as provided for the exemption in section 7hh of the general property tax act, 1893 PA 206, MCL 211.7hh. The clerk of the local tax collecting unit shall notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit shall afford the assessor and a representative of the affected taxing units an opportunity for a hearing. If a resolution authorizing the exemption is adopted in the same manner as provided in section 7hh of the general property tax act, 1893 PA 206, MCL 211.7hh, the rehabilitated facility owned or operated by a qualified start-up business is exempt from the obsolete properties tax levied under this act, except for that portion of the obsolete properties tax attributable to a special assessment or a tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff, for the year in which the resolution is adopted. A qualified start-up business is not eligible for an exemption under this subsection for more than 5 years. A qualified start-up business may receive the exemption under this subsection in non-consecutive years. The obsolete properties tax calculated under this subsection shall be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the general property tax act, 1893 PA 206, MCL 211.7ff. As used in this subsection, "qualified start-up business" means that term as defined in section 31a of the single business tax act, 1975 PA 228, MCL 208.31a.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 252]

(HB 6025)

AN ACT to amend 1893 PA 206, entitled "An act to provide for the assessment of rights and interests, including leasehold interests, in property and the levy and collection of taxes on property, and for the collection of taxes levied; making those taxes a lien on the property taxed, establishing and continuing the lien, providing for the sale or forfeiture and conveyance of property delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to provide for the establishment of a delinquent tax revolving fund and the borrowing of money by counties and the issuance of notes; to define and limit the jurisdiction of the courts in proceedings in connection with property delinquent for taxes; to limit the time within which actions may be brought; to prescribe certain limitations with respect to rates of taxation; to prescribe certain powers and duties of certain officers, departments, agencies, and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal acts and parts of acts," (MCL 211.1 to 211.157) by adding section 7hh.

The People of the State of Michigan enact:

211.7hh Qualified start-up business; exemption from tax.

Sec. 7hh. (1) Notwithstanding the tax day provided in section 2 and except as limited in subsection (5) and otherwise provided in subsection (7), for taxes levied after December 31, 2004, real and personal property of a qualified start-up business is exempt from taxes levied under this act for each tax year in which all of the following occur:

(a) The qualified start-up business applies for the exemption as provided in subsection (2) or (3).

(b) The governing body of the local tax collecting unit adopts a resolution approving the exemption as provided in subsection (4).

(2) Except as otherwise provided in subsection (3), a qualified start-up business may claim the exemption under this section by filing an affidavit on or before May 1 in each tax year with the assessor of the local tax collecting unit. The affidavit shall be in a form prescribed by the state tax commission. The affidavit shall state that the qualified start-up business was eligible for and claimed the qualified start-up business credit under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a, for the applicant's last tax year ending before May 1. The affidavit shall include all of the following:

(a) A copy of the qualified start-up business's annual return filed under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, in which the qualified start-up business claimed the qualified start-up business credit under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a.

(b) A statement authorizing the department of treasury to release information contained in the qualified start-up business's annual return filed under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, that pertains to the qualified start-up business credit claimed under section 31a of the single business tax act, 1975 PA 228, MCL 208.31a.

(3) If a qualified start-up business applies for an extension for filing its annual single business tax return under section 73 of the single business tax act, 1975 PA 228, MCL 208.73, the qualified start-up business may claim the exemption under this section after May 1 if all of the following conditions are met:

(a) The governing body of the local tax collecting unit adopts a resolution under subsection (4)(b) approving the exemption for all qualified start-up businesses that apply for an extension for filing the annual single business tax return under section 73 of the single business tax act, 1975 PA 228, MCL 208.73.

(b) The qualified start-up business submits a copy of its application for an extension for filing its annual single business tax return under section 73 of the single business tax act, 1975 PA 228, MCL 208.73, and the affidavit described in subsection (2) to the December board of review provided in section 53b. For purposes of section 53b, an exemption granted under this subsection shall be considered the correction of a clerical error.

(4) On or before its last meeting in May in each tax year, the governing body of a local tax collecting unit may adopt a resolution approving the exemption provided in this section. The clerk of the local tax collecting unit shall notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit shall afford the assessor and a representative of the affected taxing units an opportunity for a hearing. A resolution approving the exemption provided in this section may be for 1 or both of the following:

(a) One or more of the individual qualified start-up businesses that claim the exemption under this section by filing an affidavit on or before May 1 as provided in subsection (2).

(b) All qualified start-up businesses that claim the exemption under this section after May 1 as provided in subsection (3).

(5) A qualified start-up business shall not receive the exemption under this section for more than a total of 5 tax years. A qualified start-up business may receive the exemption under this section in nonconsecutive tax years.

(6) If an exemption under this section is erroneously granted, the tax rolls shall be corrected for the current tax year and the 3 immediately preceding tax years. The property that had been subject to that exemption shall be immediately placed on the tax roll by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll as though the exemption had not been granted. A corrected tax bill shall be issued for the tax year being adjusted by the local tax collecting unit if the local tax collecting unit has possession of the tax roll or by the county treasurer if the county has possession of the tax roll. If an owner pays the corrected tax bill issued under this subsection within 60 days after the corrected tax bill is issued, that owner is not liable for any penalty or interest on the additional tax. If an owner pays a corrected tax bill issued under this subsection more than 60 days after the corrected tax bill is issued, the owner is liable for the penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

(7) Real and personal property of a qualified start-up business is not exempt from collection of the following:

(a) A special assessment levied by the local tax collecting unit in which the property is located.

(b) Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.

(c) A tax levied under section 705 or 1212 of the revised school code, 1976 PA 451, MCL 380.705 and 380.1212.

(8) As used in this section, "qualified start-up business" means that term as defined in section 31a of the single business tax act, 1975 PA 228, MCL 208.31a.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 253]

(HB 4013)

AN ACT to amend 1956 PA 205, entitled "An act to confer upon circuit courts jurisdiction over proceedings to compel and provide support of children born out of wedlock; to prescribe the procedure for determination of such liability; to authorize agreements providing for furnishing of such support and to provide for the enforcement thereof; and to prescribe penalties for the violation of certain provisions of this act," by amending section 2 (MCL 722.712), as amended by 1998 PA 113.

The People of the State of Michigan enact:

722.712 Child born out of wedlock; liability of parents.

Sec. 2. (1) The parents of a child born out of wedlock are liable for the necessary support and education of the child. They are also liable for the child's funeral expenses.

Subject to subsections (2) and (3), based on each parent's ability to pay and on any other relevant factor, the court may apportion, in the same manner as medical expenses of the child are divided under the child support formula, the reasonable and necessary expenses of the mother's confinement and expenses in connection with her pregnancy between the parents and require the parent who did not pay the expense to pay his or her share of the expense to the other parent. At the request of a person other than a parent who has paid the expenses of the mother's confinement or expenses in connection with her pregnancy, the court may order a parent against whom the request is made to pay to the person other than a parent the parent's share of the expenses.

(2) If a pregnancy or a complication of a pregnancy has been determined in another proceeding to have been the result of either a physical or sexual battery by a party to the case, the court shall apportion these expenses to the party who was the perpetrator of the battery.

(3) If medicaid has paid the confinement and pregnancy expenses of a mother under this section, the court shall not apportion confinement and pregnancy expenses to the mother. After the effective date of the amendatory act that added this subsection, based on the father's ability to pay and any other relevant factor, the court may apportion not more than 100% of the reasonable and necessary confinement and pregnancy costs to the father. If medicaid has not paid the confinement and pregnancy expenses of the mother under this section, the court shall require an itemized bill for the expenses upon request from the father before an apportionment is made.

(4) The court order shall provide that if the father marries the mother after the birth of the child and provides documentation of the marriage to the friend of the court, the father's obligation for payment of any remaining unpaid confinement and pregnancy expenses is abated subject to reinstatement after notice and hearing for good cause shown, including, but not limited to, dissolution of the marriage. The remaining unpaid amount of the confinement and pregnancy expenses owed by the father is abated as of the date that documentation of the marriage is provided to the friend of the court.

(5) Each confinement and pregnancy expenses order entered by the court on or before the effective date of the amendatory act that added this subsection shall be considered by operation of law to provide for the abatement of the remaining unpaid confinement and pregnancy expenses if the father marries the mother and shall be implemented under the same circumstances and enforced in the same manner as for the abatement of confinement and pregnancy expenses provided by subsection (4).

(6) The court shall admit in proceedings under this act a bill for funeral expenses, expenses of the mother's confinement, or expenses in connection with the mother's pregnancy, which bill constitutes prima facie evidence of the amount of those expenses, without third party foundation testimony.

(7) If the father dies, an order of filiation or a judicially approved settlement made before his death is enforceable against his estate in the same manner and way as a divorce decree.

(8) As used in this section, "medicaid" means the medical assistance program administered by the state under section 105 of the social welfare act, 1939 PA 280, MCL 400.105.

Effective date.

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

This act is ordered to take immediate effect.
Approved July 23, 2004.
Filed with Secretary of State July 23, 2004.

[No. 254]

(HB 5698)

AN ACT to amend 1927 PA 372, entitled "An act to regulate and license the selling, purchasing, possessing, and carrying of certain firearms and gas ejecting devices; to prohibit the buying, selling, or carrying of certain firearms and gas ejecting devices without a license or other authorization; to provide for the forfeiture of firearms under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act," by amending section 5j (MCL 28.425j), as amended by 2002 PA 719.

The People of the State of Michigan enact:

28.425j Pistol training or safety program; conditions.

Sec. 5j. (1) A pistol training or safety program described in section 5b(7)(c) meets the requirements for knowledge or training in the safe use and handling of a pistol only if the program consists of not less than 8 hours of instruction and all of the following conditions are met:

(a) The program is certified by this state or a national or state firearms training organization and provides 5 hours of instruction in, but is not limited to providing instruction in, all of the following:

(*i*) The safe storage, use, and handling of a pistol including, but not limited to, safe storage, use, and handling to protect child safety.

(*ii*) Ammunition knowledge, and the fundamentals of pistol shooting.

(*iii*) Pistol shooting positions.

(*iv*) Firearms and the law, including civil liability issues and the use of deadly force. This portion shall be taught by an attorney or an individual trained in the use of deadly force.

(*v*) Avoiding criminal attack and controlling a violent confrontation.

(*vi*) All laws that apply to carrying a concealed pistol in this state.

(b) The program provides at least 3 hours of instruction on a firing range and requires firing at least 30 rounds of ammunition.

(c) The program provides a certificate of completion that states the program complies with the requirements of this section and that the individual successfully completed the course, and that contains the printed name and signature of the course instructor. Not later than October 1, 2004, the certificate of completion shall contain the statement, "This course complies with section 5j of 1927 PA 372."

(d) The instructor of the course is certified by this state or a national organization to teach the 8-hour pistol safety training course described in this section.

(2) A person shall not do either of the following:

(a) Grant a certificate of completion described under subsection (1)(c) to an individual knowing the individual did not satisfactorily complete the course.

(b) Present a certificate of completion described under subsection (1)(c) to a concealed weapon licensing board knowing that the individual did not satisfactorily complete the course.

(3) A person who violates subsection (2) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,500.00, or both.

(4) A concealed weapons licensing board shall not require that a specific form, color, wording, or other content appear on a certificate of completion, except as provided in subsection (5), and shall accept as valid a certificate of completion issued prior to the effective date of the amendatory act that added this subsection that contains an inaccurate reference or no reference to this section but otherwise complies with this section.

(5) Beginning October 1, 2004, a concealed weapons licensing board shall require that a certificate of completion contain the statement, "This course complies with section 5j of 1927 PA 372.".

This act is ordered to take immediate effect.
Approved July 23, 2004.
Filed with Secretary of State July 23, 2004.

[No. 255]

(HB 4260)

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 174a (MCL 750.174a), as added by 2000 PA 222.

The People of the State of Michigan enact:

750.174a Person in relationship of trust with vulnerable adult; prohibited conduct; violation; penalty; enhanced sentence; exceptions; definitions; report by office of services to the aging to family independence agency.

Sec. 174a. (1) A person shall not through fraud, deceit, misrepresentation, coercion, or unjust enrichment obtain or use or attempt to obtain or use a vulnerable adult's money or property to directly or indirectly benefit that person knowing or having reason to know the vulnerable adult is a vulnerable adult.

(2) If the money or property used or obtained, or attempted to be used or obtained, has a value of less than $200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00 or 3 times the value of the money or property used or obtained or attempted to be used or obtained, whichever is greater, or both imprisonment and a fine.

(3) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00 or 3 times the value of the money or property used or obtained or attempted to be used or obtained, whichever is greater, or both imprisonment and a fine:

(a) The money or property used or obtained, or attempted to be used or obtained, has a value of $200.00 or more but less than $1,000.00.

(b) The person violates subsection (2) and has 1 or more prior convictions for committing or attempting to commit an offense under this section.

(4) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00 or 3 times the value of the money or property used or obtained or attempted to be used or obtained, whichever is greater, or both imprisonment and a fine:

(a) The money or property used or obtained, or attempted to be used or obtained, has a value of $1,000.00 or more but less than $20,000.00.

(b) The person violates subsection (3)(a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subdivision, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection (2) or (3)(b).

(5) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00 or 3 times the value of the money or property used or obtained or attempted to be used or obtained, whichever is greater, or both imprisonment and a fine:

(a) The money or property used or obtained, or attempted to be used or obtained, has a value of $20,000.00 or more.

(b) The person violates subsection (4)(a) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subdivision, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection (2) or (3)(b).

(6) Except as otherwise provided in this subsection, the values of money or property used or obtained or attempted to be used or obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of money or personal property used or obtained or attempted to be used or obtained. If the scheme or course of conduct is directed against only 1 person, no time limit applies to aggregation under this subsection.

(7) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(8) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(9) A financial institution or a broker or a director, officer, employee, or agent of a financial institution or broker is not in violation of this section while performing duties in the normal course of business of a financial institution or broker or a director, officer, employee, or agent of a financial institution or broker.

(10) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law the person commits while violating this section.

(11) As used in this section:

(a) "Broker" means that term as defined in section 8102 of the uniform commercial code, 1962 PA 174, MCL 440.8102.

(b) "Financial institution" means a bank, credit union, saving bank, or a savings and loan chartered under state or federal law or an affiliate of a bank, credit union, saving bank, or savings and loan chartered under state or federal law.

(c) "Vulnerable adult" means that term as defined in section 145m, whether or not the individual has been determined by the court to be incapacitated.

(12) If the office of services to the aging becomes aware of a violation of this section, the office of services to the aging shall promptly report the violation to the family independence agency.

Effective date.

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

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 256]

(HB 5482)

AN ACT to amend 1954 PA 116, entitled "An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act," (MCL 168.1 to 168.992) by adding section 679a.

The People of the State of Michigan enact:

168.679a Receiving board; appointment and duties of inspectors; review of poll book and statement of returns; corrective action; delivery.

Sec. 679a. (1) The legislative body of a city, township, or village may, by resolution, provide that at an election at which the ballots are counted and certified at the precinct, 1 or more additional boards of election inspectors be appointed to serve as receiving boards. For a precinct having receiving boards, the board of election commissioners shall appoint a receiving board consisting of 2 or more election inspectors, with an equal number from each major political party, and shall appoint an equal number of election inspectors from each major political party.

(2) Not less than 2 election inspectors in a precinct, representing each of the major political parties, shall deliver to the receiving board for that precinct a sealed ballot container containing the voted ballots, and, in a separate sealed envelope, the poll book

and statement of returns. The poll book and statement of returns may be enclosed in a single sealed envelope.

(3) The receiving board shall open the sealed envelope and review the poll book and statement of returns to determine both of the following:

(a) That the ballot container is properly sealed and the seal number is properly recorded in the poll book and the statement of returns. If the ballot container is not properly sealed or there is a discrepancy with the seal number recorded in the poll book or the statement of returns, the election inspectors who delivered the ballot container and the receiving board shall together take the necessary steps to correct the discrepancy. The election inspectors and the receiving board shall note the discrepancy and the corrective action in the remarks section of the poll book and all shall sign the notation.

(b) That the number of individuals voting recorded in the poll book equals the number of ballots issued to electors, as shown by the statement of returns. If the number of individuals voting as shown by the poll book does not equal the number of ballots counted as shown by the statement of returns, and if an explanation of the discrepancy has not been noted in the poll book, the receiving board shall ask the election inspectors about the discrepancy, note the explanation in the poll book, and all shall sign the notation.

(4) If the poll book or statement of returns has been erroneously sealed in the ballot container, the election inspectors may open the ballot container and remove the poll book or statement of returns. The elections inspectors and receiving board shall note the corrective action in the remarks section of the poll book and all shall sign the notation before placing the poll book or statement of returns in a separate sealed envelope. If the statement of returns was sealed in the ballot container and the poll book was sealed in an envelope, the poll book shall be removed from the sealed envelope for the notation of corrective action to be recorded before placing the poll book and statement of returns in a sealed envelope. The receiving board shall notify the clerk of the board of canvassers responsible for canvassing all or a portion of the election of the corrective action taken.

(5) When the receiving board has completed the review under subsection (3), the receiving board shall place the poll book and statement of returns in the appropriate envelope, sealed with a red paper seal and initialed by the receiving board. If permitted by the clerk of the board of canvassers, the poll books and statement of returns from more than 1 precinct may be included and delivered in a single envelope.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 257]

(HB 5994)

AN ACT to amend 1954 PA 116, entitled "An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse

of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act," (MCL 168.1 to 168.992) by adding section 316.

The People of the State of Michigan enact:

168.316 Board members subject to recall.

Sec. 316. Each member of a board of a school district, a local act school district, or an intermediate school district is subject to recall by the school electors of the respective district in the manner prescribed in chapter XXXVI.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 258]

(SB 1116)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," by amending section 9 (MCL 208.9), as amended by 2001 PA 230.

The People of the State of Michigan enact:

208.9 "Tax base" defined.

Sec. 9. (1) "Tax base" means business income, before apportionment or allocation as provided in chapter 3, even if zero or negative, subject to the adjustments in this section.

(2) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(3) Add all taxes on or measured by net income and the tax imposed by this act to the extent the taxes were deducted in arriving at federal taxable income.

(4) Add the following, to the extent deducted in arriving at federal taxable income:

(a) A carryback or carryover of a net operating loss.

(b) A carryback or carryover of a capital loss.

(c) A deduction for depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets.

(d) A dividend paid or accrued except a dividend that represents a reduction of premiums to policyholders of insurance companies.

(e) A deduction or exclusion by a taxpayer due to a classification as, or the payment of commissions or other fees to, a domestic international sales corporation or any like special classification the purpose of which is to reduce or postpone the federal income tax liability. This subdivision does not apply to the special provisions of sections 805, 809, and 815(c)(2)(A) of the internal revenue code.

(f) All interest including amounts paid, credited, or reserved by insurance companies as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code. Interest does not include payments or credits made to or on behalf of a taxpayer by a manufacturer, distributor, or supplier of inventory to defray any part of the taxpayer's floor plan interest, if these payments are used by the taxpayer to reduce interest expense in determining federal taxable income. For purposes of this section, "floor plan interest" means interest paid that finances any part of the taxpayer's purchase of automobile inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a taxpayer than to a person who is not a taxpayer is considered interest paid by a manufacturer, distributor, or supplier.

(g) All royalties except for the following:

(*i*) On and after July 1, 1985, oil and gas royalties that are excluded in the depletion deduction calculation under the internal revenue code.

(*ii*) Cable television franchise fees described in section 622 of part III of title VI of the communications act of 1934, 47 U.S.C. 542.

(*iii*) Except as provided in subparagraph (*iv*), for the tax years 1986 and after 1986, a franchise fee as defined by section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

(B) For the tax years 1989 and 1990, 50% of the franchise fee.

(C) For the tax years 1991 and after 1991, 100% of the franchise fee.

(*iv*) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

(*v*) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(*vi*) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(*vii*) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

(*viii*) For tax years that begin after December 31, 1993, royalties paid by a licensee of application computer software, operating system software, or system software pursuant to a license agreement. As used in this subparagraph and subsection (7)(c)(*vii*):

(A) "Application computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular business function, task, or result for the nontechnical end user. Application computer software includes any other computer software that does not qualify under sub-subparagraph (B) or (C).

(B) "Operating system software" means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application computer software or system software.

(C) "System software" means a set of statements or instructions that interacts with operating system software that is developed, licensed, and intended for the exclusive use of data processing professionals to build, test, manage, or maintain application computer software for which a license agreement is signed by the licensor and licensee at the time of the transfer of the software and that is not transferred to the licensee as part of or in conjunction with a sale or lease of computer hardware.

(*ix*) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.

(h) A deduction for rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

(5) Add compensation.

(6) Add a capital gain related to business activity of individuals to the extent excluded in arriving at federal taxable income.

(7) Deduct the following, to the extent included in arriving at federal taxable income:

(a) A dividend received or considered received, including the foreign dividend gross-up provided for in the internal revenue code.

(b) All interest except amounts paid, credited, or reserved by an insurance company as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code.

(c) All royalties except for the following:

(*i*) On and after July 1, 1985, oil and gas royalties that are included in the depletion deduction calculation under the internal revenue code.

(*ii*) Except as provided in subparagraph (*iii*), for the 1986 tax year and after the 1986 tax year, a franchise fee as defined in section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

(B) For the tax years 1989 and 1990, 50% of the franchise fee.

(C) For the tax years 1991 and after 1991, 100% of the franchise fee.

(*iii*) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

(*iv*) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(*v*) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(*vi*) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

(*vii*) For tax years that begin after December 31, 1997, royalties received by a licensor, distributor, developer, marketer, or copyright holder of application computer software or operating system software pursuant to a license agreement. System software is not included within the exception under this subparagraph.

(*viii*) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or

maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.

(d) Rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

(8) Deduct a capital loss not deducted in arriving at federal taxable income in the year the loss occurred.

(9) To the extent included in federal taxable income, add the loss or subtract the gain from the tax base that is attributable to another entity whose business activities are taxable under this act or would be taxable under this act if the business activities were in this state.

(10) For tax years that begin after December 31, 2004, deduct, to the extent included in federal taxable income, income received from either of the following:

(a) Small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) Grants from the Michigan technology tri-corridor SBIR emerging business fund administered by the Michigan economic development corporation.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 259]

(SB 1216)

AN ACT to amend 1974 PA 258, entitled "An act to codify, revise, consolidate, and classify the laws relating to mental health; to prescribe the powers and duties of certain state and local agencies and officials and certain private agencies and individuals; to regulate certain agencies and facilities providing mental health services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness or developmental disability; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness or developmental disability who are in the criminal justice system; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending section 137 (MCL 330.1137), as amended by 1995 PA 290.

The People of the State of Michigan enact:

330.1137 Psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program; license required; disclosures; provisional license; violation; penalty; biennial licensure; fees; receipt of completed application; issuance of license within certain time period; report; "completed application" defined.

Sec. 137. (1) A person shall not construct, establish, or maintain a psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program or use the terms psychiatric

hospital, psychiatric unit, or psychiatric partial hospitalization program, without first obtaining a license. The director shall require an applicant or a licensee to disclose the names, addresses, and official positions of all persons who have an ownership interest in a psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program. If the psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program is located on or in real estate that is leased, the applicant or licensee shall disclose the name of the lessor and any direct or indirect interest that the applicant or licensee has in the lease other than as lessee. A nontransferable license shall be granted for 2 years after the date of issuance, unless otherwise provided in sections 134 to 150. The director may issue a provisional license for 1 year to provide a licensee or applicant time to undertake remedial action to correct programmatic or physical plant deficiencies. A provisional license may be renewed for not longer than 1 additional year. A violation of this section is a misdemeanor and is punishable by a fine of not more than $1,000.00 for each violation.

(2) Biennial licensure of psychiatric hospitals, psychiatric units, and psychiatric partial hospitalization programs shall be implemented by March 28, 1997. License fees shall be prorated according to the period of time that the license will be in force.

(3) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial license under this section not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. The 6-month period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

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

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

(a) The number of initial applications the department received and completed within the 6-month time period described in subsection (3).

(b) The number of applications rejected.

(c) The number of applicants not issued a license within the 6-month time period and the amount of money returned to licensees under subsection (4).

(6) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information,

records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 260]

(SB 1222)

AN ACT to amend 1965 PA 285, entitled "An act to license and regulate private detectives and investigators; to provide for certain powers and duties for certain state agencies and local officials; to provide for the imposition for certain fees; to protect the general public against unauthorized, unlicensed and unethical operations by private detectives and private investigators; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending sections 9, 11, and 26 (MCL 338.829, 338.831, and 338.846), as amended by 2002 PA 474.

The People of the State of Michigan enact:

338.829 License; conditions of issuance; fee; duration; suspension or revocation; bonds; branch office; filing completed application; issuance of license within certain time period; report; "completed application" defined.

Sec. 9. (1) The department, when satisfied of the competency and integrity of the applicant, or if the applicant is a firm, partnership, company, limited liability company, or corporation, of its individual members or officers, shall issue to the applicant a license upon the applicant's paying to the department an application processing fee of $150.00 and an initial license fee of $600.00. The applicant shall execute, deliver, and file with the department a bond in the sum of $10,000.00, conditioned for the faithful and honest conduct of the business by the applicant, which bond shall be approved by the department. The license is valid for 3 years but is subject to suspension or revocation at all times by the department for cause shown. The bonds shall be taken in the name of the people of the state, and any person injured by the willful, malicious, and wrongful act of the principal may bring an action on the bond or insurance in his or her own name to recover damages suffered by reason of such willful, malicious, and wrongful act. In lieu of a bond, the applicant may furnish a policy of insurance issued by an insurer authorized to do business in this state naming the licensee and the state as co-insured in the amount of $10,000.00 for property damages, $100,000.00 for injury or death of 1 person, and $200,000.00 for injuries to or deaths of more than 1 person arising out of the operation of the licensed activity. The license shall be in a form to be prescribed by the department and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau, agency, subagency, office or branch office for which the license is issued, the expiration date, and the name of the person filing the statement required by this act upon which the license is issued.

(2) A licensee desiring to open a branch office or subagency shall receive a license for that branch or subagency upon payment to the department of an additional fee of $125.00

for each additional license. The additional license shall be posted in a conspicuous place in the branch office or subagency and expires on the date of the initial license.

(3) If the license is suspended or revoked for any cause, the department shall not refund the license or application processing fee or any part of the license or application processing fee.

(4) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

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

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

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (5).

(7) As used in this section and section 26, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

338.831 License fee; refund; conditions.

Sec. 11. The department shall not refund a license fee unless a showing is made of mistake, inadvertence, error in the collection of the fee, or noncompliance with the time periods described in section 9(4).

338.846 License; renewal; fee; bond.

Sec. 26. (1) A license granted under this act may be renewed upon application and the payment of a renewal fee of $300.00, unless reduced under section 9(5), and filing of a renewal surety bond or liability insurance policy in the amount equivalent to that specified in section 9.

(2) A renewal license shall be dated as of the expiration date of the previously existing license. For the renewal of a license, the licensee shall submit an application in such form as prescribed by the department. Upon receipt of a completed application, payment of the renewal fee subject to section 9(5), and proof acceptable to the department of bond or insurance, the department shall renew a license. The department may defer the renewal if there are uninvestigated complaints then outstanding against the licensee or if there is a criminal complaint then pending against the licensee.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 261]

(SB 1223)

AN ACT to amend 1986 PA 135, entitled "An act to provide for the licensing and regulation of asbestos abatement contractors; to create the asbestos abatement contractors licensing board; to prescribe certain powers and duties of the department of consumer and industry services; to establish the powers and duties of the asbestos abatement contractors licensing board; to create an asbestos abatement fund and to provide for expenditures from the fund; to provide for the promulgation of rules; to provide for certain fees; and to provide for penalties and civil fines," by amending sections 209 and 211 (MCL 338.3209 and 338.3211), section 209 as amended by 1993 PA 55 and section 211 as amended by 1998 PA 132.

The People of the State of Michigan enact:

338.3209 Application for or renewal of license; requirements; fee.

Sec. 209. (1) To apply for or renew a license, an asbestos abatement contractor shall do all of the following:

(a) Submit a completed application to the department on forms provided by the department. The asbestos abatement contractor shall state on the application whether or not the asbestos abatement contractor has liability insurance.

(b) Pay the fee required by subsection (2).

(c) Submit proof of Michigan workers' disability compensation insurance.

(d) Submit proof that all employees and agents of an asbestos abatement contractor who are responsible for, or are involved in, an asbestos abatement project have received training and become accredited as asbestos abatement workers or asbestos abatement contractors and supervisors as required under the asbestos workers accreditation act, 1988 PA 440, MCL 338.3401 to 338.3418.

(2) Subject to section 211, a license or renewal fee shall be paid as follows:

Number of employees to be engaged in asbestos abatement projects	License fee	License renewal fee
4 or less	$200.00	$100.00
5 or more	$400.00	$300.00

338.3211 Acknowledging receipt of application; notice of deficiency; issuance of license or denial of application; time; statement in license; grounds for denial of application; failure to issue license within certain time period; report; return of fee; proceedings for denial of license; "completed application" defined.

Sec. 211. (1) Within 15 working days after receiving a license application, the department shall acknowledge receipt of the application and notify the applicant in writing, or make the information electronically available, of any deficiency in the application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. Within 60 calendar days after receiving a completed application, including all additional information requested by the department, the department shall issue a license or deny the license application. The 60-day time period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The license shall contain a statement in bold print that the issuance of a license does not imply asbestos indemnification coverage.

(2) The department shall deny a license application if the department determines that the applicant has not demonstrated the ability to comply with either of the following:

(a) The applicable requirements and procedures established by the department and the board under this act.

(b) Other state and federal law pertaining to the health and safety aspects of asbestos demolition, renovation, and encapsulation.

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

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

(a) The number of initial and renewal applications the department received and completed within the time period described in this section.

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees under subsection (3).

(5) If the department denies a license, the department shall return to the applicant the application fee, less $25.00 subject to subsection (3).

(6) Proceedings for the denial of a license under this act shall be in accordance with the administrative procedures act of 1969.

(7) As used in this section and section 209, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 262]

(SB 1224)

AN ACT to amend 1988 PA 440, entitled "An act to provide for the accreditation of persons who perform asbestos-related work in schools, school buildings, and public and commercial buildings; to prescribe powers and duties of certain state agencies and officers; to prescribe remedies and penalties; and to assess certain fees," by amending sections 11 and 14 (MCL 338.3411 and 338.3414), as amended by 1998 PA 133.

The People of the State of Michigan enact:

338.3411 Sponsorship of training course or refresher training course; application for approval; requirements; fee; information; determination as to approval or denial; qualifications of instructors; receipt of completed application; issuance of license within certain period of time; report; "completed application" defined.

Sec. 11. (1) A person desiring to sponsor a training course or refresher training course for those disciplines required to be accredited under this act may apply for department approval on forms supplied by the department. The department shall approve a training course or a refresher training course that meets the requirements for the course as prescribed by section 6.

(2) An applicant desiring to sponsor a training course shall submit for each course all of the following information and fees to the department:

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

(b) A list of any states that currently approve the training course, including information as to whether the training course has been approved by the United States environmental protection agency.

(c) The course curriculum.

(d) A letter from the training course sponsor clearly indicating compliance of the course with the requirements of this act for all of the following:

(*i*) The length of training in days.

(*ii*) The amount and type of hands-on training.

(*iii*) The length, format, and passing score of the examination.

(*iv*) The topics covered in the course.

(e) A copy of all course materials, including student manuals, instructor notebooks, handouts, and all other materials that the department may request.

(f) A detailed statement about the development of the examination used in the course.

(g) The names and qualifications of course instructors.

(h) A description and example of the certificate of successful course completion issued to students who attend the course and pass the examination that satisfies the requirements of the asbestos model accreditation plan.

(i) An initial application fee of $400.00 and, after the initial year, an annual renewal fee of $200.00. If the application is for renewal, the application and annual fee shall be submitted not earlier than 90 days before the course expires but not later than 30 days before the course expires. An application for renewal that is submitted later than the time period specified in this subdivision shall be treated by the director as an initial application for course renewal and shall require payment of the initial application fee, rather than the renewal fee.

(3) An applicant desiring to sponsor a refresher training course in a discipline required to be accredited under this act shall supply all of the following information to the department:

(a) The length of training.

(b) The topics covered in the course.

(c) A copy of all course materials.

(d) The names and qualifications of course instructors.

(e) A description and an example of the certificate of successful completion of the training course that satisfies the requirements of the asbestos model accreditation plan.

(4) Within 60 calendar days after receipt of the appropriate fee and a completed application from a person desiring to sponsor training courses as specified in this section, the department shall make a determination as to the approval or denial of the application and shall notify the applicant in writing of its determination. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan.

(5) The instructor of a course offered under this section shall have academic credentials or field experience, or both, in asbestos abatement.

(6) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal license within the time period prescribed by subsection (4). If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 15 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 60-day period described in subsection (4) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(7) If the department fails to issue or deny a license within the time required by subsection (4), the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The

department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

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

(a) The number of initial and renewal applications the department received and completed within the 60-day time period described in subsection (4).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 60-day time period and the amount of money returned to licensees and registrants under subsection (7).

(9) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

338.3414 Submission of application and annual fee; fee schedule; failure to submit annual fee; disposition of fees.

Sec. 14. (1) A person desiring accreditation or reaccreditation from the director under section 13 shall submit to the department an application for accreditation or reaccreditation on forms provided by the department. The applicant shall include, with the application, payment of the annual fee designated in subsection (3), subject to any refund or discount prescribed under section 11(7).

(2) If the application is for reaccreditation, the application and annual fee shall be submitted not earlier than 90 days before the accreditation expires but not later than 30 days before the accreditation expires. An application for reaccreditation that is submitted later than the time period specified in this subsection shall be treated by the director as an initial application for accreditation, and shall require payment of the accreditation fee, rather than the reaccreditation fee.

(3) The fee schedule for accreditation or reaccreditation is as follows:

	Accreditation	Reaccreditation
(a) Asbestos inspectors	$150.00	$75.00
(b) Asbestos management planners	$150.00	$75.00
(c) Asbestos abatement project designers	$150.00	$75.00
(d) Asbestos abatement contractors and supervisors	$50.00	$25.00
(e) Asbestos abatement workers	$50.00	$25.00

(4) Failure to submit the annual fee as part of the application for accreditation constitutes just cause for the director to deny issuance to a person of a certificate of accreditation or reaccreditation under section 13.

(5) All fees collected by the department under subsection (1) shall be deposited in the asbestos abatement fund created in section 220 of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3220.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

[No. 263]

(SB 1230)

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 5 (MCL 338.2205), as amended by 1988 PA 461.

The People of the State of Michigan enact:

338.2205 Refund of fees; rules.

Sec. 5. (1) Except under rules promulgated by the department pursuant to this section or as provided under section 411 of the occupational code, a fee collected by the department, when paid pursuant to this act, shall not be refunded.

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

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1231 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved July 22, 2004.
Filed with Secretary of State July 23, 2004.

Compiler's note: Senate Bill No. 1231, referred to in enacting section 1, was filed with the Secretary of State July 23, 2004, and became P.A. 2004, No. 264, Imd. Eff. July 23, 2004.

[No. 264]

(SB 1231)

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 207, 409, and 411 (MCL 339.207, 339.409, and 339.411), sections 409 and 411 as amended by 2002 PA 611.