

(ii) Limit the length of the testimony of the person's witnesses.

(iii) Limit the person's cross-examination of witnesses.

(iv) Otherwise limit the person's participation in the litigation.

(6) If the attorney general notifies the court that he or she declines to take over the action under subsection (3), the person who initiated the action may proceed with the action. At the attorney general's request and expense, the attorney general shall be provided with copies of all pleadings filed in the action and copies of all deposition transcripts. Notwithstanding the attorney general's election not to take over the action, the court may permit the attorney general to intervene in the action at any time upon a showing of good cause and, subject to subsection (7), without affecting the rights or status of the person initiating the action.

(7) Upon a showing, conducted in camera, that actions of the person initiating the action during discovery would interfere with the attorney general's investigation or prosecution of a criminal or civil matter, the court may stay the discovery for not more than 90 days. The court may extend the stay upon a further showing that the attorney general is pursuing the investigation or proceeding with reasonable diligence and the discovery would interfere with the ongoing investigation or proceeding.

(8) As an alternative to an action permitted under this section, the attorney general may pursue a violation of this act through any alternate remedy available to this state, including an administrative proceeding. If the attorney general pursues an alternate remedy, a person who initiated an action under this section shall have equivalent rights in that proceeding to the rights that the person would have had if the action had continued under this section to the extent consistent with the law governing that proceeding. Findings of fact and conclusions of law that become final in an alternative proceeding shall be conclusive on the parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(9) Subject to subsections (10) and (11), if a person other than the attorney general or the attorney general prevails in an action that the person initiates under this section, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, the following percentage of the monetary proceeds resulting from the action or any settlement of the claim:

(a) If the attorney general intervenes, 15% to 25%.

(b) If the attorney general does not intervene, 25% to 30%.

(10) If the court finds an action under this section to be based primarily on disclosure of specific information that was not provided by the person bringing the action, such as information from a criminal, civil, or administrative hearing in a state or federal department or agency, a legislative report, hearing, audit, or investigation, or the news media, and the attorney general proceeds with the action, the court may award the person bringing the action no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.

(11) If the court finds that the person bringing an action under this section planned and initiated the conduct upon which the action is brought, then the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the person would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act shall not initiate or remain a party to an action under this section and is not entitled to share in the monetary proceeds resulting from the action or any settlement under this section.

(12) A person other than the attorney general shall not bring an action under this section that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding to which this state or the federal government is already a party. The court shall dismiss an action brought in violation of this section.

(13) Unless the person is the original source of the information, a person, other than the attorney general, shall not initiate an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media. The person is the original source if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the attorney general before filing an action based on that information under this section.

(14) This state and the attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section. Any amount awarded to a person initiating an action to enforce this act is payable solely from the proceeds of the action or settlement.

(15) If a person proceeds with an action under this section after being notified that the attorney general has declined to intervene and the court finds that the claim was frivolous, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591, the court shall award the prevailing defendant actual and reasonable attorney fees and expenses and, in addition, shall impose a civil fine of not more than \$10,000.00. The civil fine shall be deposited into the Michigan medicaid benefits trust fund established in section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

#### **400.610c Employment action against employee initiating, assisting in, or participating in court action; prohibition; violation; liability of employer.**

Sec. 10c. (1) An employer shall not discharge, demote, suspend, threaten, harass, or in any other manner, discriminate against an employee in the terms and conditions of employment because the employee engaged in lawful acts, including initiating, assisting in, or participating in the furtherance of an action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591; the court finds to have planned and initiated the conduct upon which the action is brought; or is convicted of criminal conduct arising from a violation of this act.

(2) An employer who violates this section is liable to the employee for all of the following:

- (a) Reinstatement to the employee's position without loss of seniority.
- (b) Two times the amount of lost back pay.
- (c) Interest on the back pay.
- (d) Compensation for any special damages.
- (e) Any other relief necessary to make the employee whole.

#### **400.611 Filing and prosecution of action; jurisdiction; service of process.**

Sec. 11. (1) An action brought by the attorney general under this act may be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.

(2) A person may bring a civil action under section 10a in any county in which venue is proper. If the attorney general elects to intervene under section 10a(3) or (6) and the court

grants the request, upon motion by the attorney general, the court shall transfer the action to the circuit court in Ingham county.

(3) Process issued by a court in which an action is filed may be served anywhere in the state.

**400.612 Civil penalty for receiving benefit by reason of fraud, making fraudulent statement, knowingly concealing material fact, or engaging in prohibited conduct; criminal action not required.**

Sec. 12. (1) A person who receives a benefit that the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact, or who engages in any conduct prohibited by this statute, shall forfeit and pay to the state the full amount received, and for each claim a civil penalty of not less than \$5,000.00 or more than \$10,000.00 plus triple the amount of damages suffered by the state as a result of the conduct by the person.

(2) A criminal action need not be brought against the person for that person to be civilly liable under this section.

**400.614 Statute of limitations.**

Sec. 14. (1) A person shall not bring a civil action under section 10a after the later of the following:

(a) More than 6 years after the date on which the violation described in section 10a was committed.

(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state of Michigan charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.

(2) A person may bring an action under this act for conduct that occurred before the effective date of the amendatory act that added this section if the action is filed within the time limitation in subsection (1).

**400.615 Burden of proof; preponderance of evidence.**

Sec. 15. A person bringing a civil action under this act is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**[No. 422]**

**(SB 1344)**

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

retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 1205 (MCL 500.1205), as amended by 2001 PA 228.

*The People of the State of Michigan enact:*

**500.1205 Resident insurance producer license; filing; application; statement; requirements; business entity; verification of information; limited line credit insurance.**

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

- (a) Is at least 18 years of age.
- (b) Has not committed any act listed in section 1239(1).
- (c) As required under section 1204(2), has completed a preclicensing course of study for the qualifications for which the person has applied.
- (d) Has paid the fees applicable to the individual under section 240.
- (e) Has successfully passed the examination required for each qualification for which the person has applied.

(2) A business entity acting as an insurance producer shall obtain an insurance producer license. A business entity applying for an insurance producer license shall file with the commissioner the uniform business entity application required by the commissioner. An application for an insurance producer license under this subsection shall not be approved unless the commissioner finds all of the following:

(a) The business entity has paid the fees under section 240(1)(d).

(b) The business entity has designated an individual licensed producer responsible for the business entity's compliance with this state's insurance laws, rules, and regulations.

(c) The business entity has not committed any act listed in section 1239(1).

(3) The commissioner may require the production of any documents reasonably necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**[No. 423]**

**(SB 1401)**

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund;

to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending section 1239 (MCL 500.1239), as amended by 2007 PA 187.

*The People of the State of Michigan enact:*

**500.1239 Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies.**

Sec. 1239. (1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance license.

(l) Knowingly accepting insurance business from an individual who is not licensed.

(m) Failing to comply with an administrative or court order imposing a child support obligation.

(n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing payment of the single business tax or the Michigan business tax.

(2) Before the commissioner denies an application for a license under section 1205 or 1206a, the commissioner shall notify in writing the applicant or licensee of the denial and of the reason for the denial. Not later than 30 days after this written denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. A hearing under this subsection shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil fine under section 1244.

(5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**[No. 424]**

**(HB 6633)**

AN ACT to amend 1975 PA 169, entitled "An act to regulate organizations and persons soliciting or collecting contributions for charitable purposes; to require registration, disclosure of information and licensing before solicitation of contributions; to provide for reporting of financial and other information by those licensed or registered and those claiming exemption; to prescribe standards of conduct and administration, and to prohibit certain actions; to provide for enforcement, investigation, and promulgation of rules by the attorney general; to preempt local regulation; to provide penalties for violations; and to repeal certain acts and parts of acts," by amending section 3 (MCL 400.273).

*The People of the State of Michigan enact:*

**400.273 Charitable organization; application for license; information to be included; conditions requiring financial statements; requirements; "contributions" defined.**

Sec. 3. (1) Unless the charitable organization is an exempt organization that is exempt from licensing and reporting under section 13, a charitable organization that solicits or intends to solicit or receives or intends to receive contributions from persons by any means shall file an application for a license under this act with the attorney general, on forms prescribed by him or her.

(2) An application for a license under this act shall include the following information:

(a) The name of the organization and any name it uses or intends to use to solicit contributions.

(b) The principal address of the organization and the address of any office in this state. If the organization does not maintain a principal office, the organization shall include the name and address of the person that has custody of its financial records.

(c) The names and addresses of the officers, directors, trustees, chief executive officer, and state agent of the organization.

(d) Where and when the organization was legally established, the form of its organization, and its tax exempt status.

(e) The purpose for which the organization is organized and the purposes for which contributions to be solicited will be used.

(f) The fiscal year date of the organization.

(g) Whether the organization is or has ever been enjoined from soliciting contributions.

(h) All methods by which solicitations will be made.

(i) Copies of contracts between charitable organizations and professional fund raisers relating to financial compensation or profit to be derived by the professional fund raisers. If a contract described in this subdivision is executed after filing of the application, the organization shall file a copy of the contract with the attorney general within 10 days of the date of execution.

(j) Other information as required by rule.

(3) If a charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of \$500,000.00 or more, the charitable organization shall include financial statements with its application for license under this section, prepared according to generally accepted accounting principles and audited by an independent certified public accountant. If a charitable organization received contributions in its immediately preceding tax year, as reported on the charitable organization's internal revenue service form 990, 990-EZ, 990-PF, or other 990-series return, in the amount of \$250,000.00 or more, but less than \$500,000.00, the charitable organization shall include financial statements with its application for license under this section that are either reviewed or audited by an independent certified public accountant. The attorney general may waive this requirement 1 time for a charitable organization.

(4) Both of the following apply for purposes of subsection (3):

(a) For license applications submitted under this section on or after January 1, 2015 and before January 1, 2020, the dollar amounts of contributions in subsection (3) at which reviewed financial statements and at which audited financial statements are required with the application are increased by \$25,000.00. Those dollar amounts are increased by an additional \$25,000.00 for every subsequent 5-year period, beginning on January 1, 2020.

(b) "Contributions" means all contributions and support reported on a charitable organization's form 990, 990-EZ, 990-PF, or other 990-series return. The term includes special fund-raising event receipts, net of direct expenses, but does not include contributions or grants received from governmental agencies.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.



**[No. 425]****(HB 6500)**

AN ACT to amend 1965 PA 314, entitled “An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers,” by amending sections 12d, 13, 19, and 20d (MCL 38.1132d, 38.1133, 38.1139, and 38.1140d), sections 12d, 19, and 20d as amended by 2000 PA 307 and section 13 as amended by 2008 PA 273, and by adding section 19a.

*The People of the State of Michigan enact:*

**38.1132d Definitions; N to P.**

Sec. 12d. (1) “National rating services” means Moody’s investors service, inc.; Standard & Poor’s ratings group; Fitch investors service inc.; Duff & Phelps credit rating corp.; or any other nationally recognized statistical rating organization as determined by the state treasurer.

(2) “Net earnings available for fixed charges” means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary expenses appearing in the regular financial statements of the system.

(3) “Obligations” means bonds, notes, collateral trust certificates, convertible bonds, debentures, equipment trust certificates, conditional sales agreements, guaranteed mortgage certificates, pass-through certificates, participation certificates, mortgages, trust deeds, general obligation bonds, revenue bonds, or other similar interest bearing instruments of debt. Obligations may be secured or unsecured and may be publicly offered or privately placed.

(4) “Party in interest” means, as it relates to a system, any of the following:

- (a) An investment fiduciary, counsel, or employee of the system.
- (b) A person providing services to the system.
- (c) The political subdivision sponsoring the system.
- (d) An organization, any of whose members are covered by the system.
- (e) A spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subdivision (a) or (b).
- (f) An entity controlled by an individual or organization described in subdivisions (a) to (e).

(5) “Portfolio company” means an entity in which the investment fiduciary has invested or has considered investing system assets.

(6) “Private equity” means an asset class consisting of equity or debt securities in entities that are not publicly traded, which may include, but are not limited to, investments in leveraged buyouts, venture capital, growth capital, distressed or special situations, mezzanine capital, and secondary investments in equity or debt interests.

**38.1133 Investment authority; investment fiduciary; investing, reinvesting, holding in nominee form, and managing assets of system; powers and duties; costs; prohibited acts; exceptions; requirements; debt instrument issued by foreign country; list of expenses.**

Sec. 13. (1) The provisions of this act shall supersede any investment authority previously granted to a system under any other law of this state.

(2) The assets of a system may be invested, reinvested, held in nominee form, and managed by an investment fiduciary subject to the terms, conditions, and limitations provided in this act. An investment fiduciary of a defined contribution plan may arrange for 1 or more investment options to be directed by the participants of the defined contribution plan. The limitations on the percentage of total assets for investments provided in this act do not apply to a defined contribution plan in which a participant directs the investment of the assets in his or her individual account, and that participant is not considered an investment fiduciary under this act.

(3) An investment fiduciary shall discharge his or her duties solely in the interest of the participants and the beneficiaries, and shall do all of the following:

(a) Act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims.

(b) Act with due regard for the management, reputation, and stability of the issuer and the character of the particular investments being considered.

(c) Make investments for the exclusive purposes of providing benefits to participants and participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the system.

(d) Give appropriate consideration to those facts and circumstances that the investment fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the system's investments for which the investment fiduciary has responsibility; and act accordingly. For purposes of this subsection, "appropriate consideration" includes, but is not limited to, a determination by the investment fiduciary that a particular investment or investment course of action is reasonably designed, as part of the investments of the system, to further the purposes of the system, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment or investment course of action; and consideration of the following factors as they relate to the investment or investment course of action:

(i) The diversification of the investments of the system.

(ii) The liquidity and current return of the investments of the system relative to the anticipated cash flow requirements of the system.

(iii) The projected return of the investments of the system relative to the funding objectives of the system.

(e) Give appropriate consideration to investments that would enhance the general welfare of this state and its citizens if those investments offer the safety and rate of return comparable to other investments permitted under this act and available to the investment fiduciary at the time the investment decision is made.

(f) Prepare and maintain written objectives, policies, and strategies with clearly defined accountability and responsibility for implementing and executing the system's investments.

(g) Monitor the investment of the system's assets with regard to the limitations on those investments pursuant to this act. Upon discovery that an investment causes the system to exceed a limitation prescribed in this act, the investment fiduciary shall reallocate assets in a prudent manner in order to comply with the prescribed limitation.

(4) An investment fiduciary who is an investment fiduciary of any of the following shall comply with the divestment from terror act, 2008 PA 234, MCL 129.291 to 129.301, in making investments under this act:

(a) The Tier 1 retirement plan available under the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69.

(b) The Tier 1 retirement plan available under the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670.

(c) The state police retirement system created under the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648.

(d) The public school employees retirement system created under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408.

(5) An investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other services necessary for the conduct of the affairs of the system; and may pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state administered system resulting from the payment of those costs shall be made.

(6) The system shall be a separate and distinct trust fund and the assets of the system shall be for the exclusive benefit of the participants and their beneficiaries and of defraying reasonable expenses of investing the assets of the system. With respect to a system, an investment fiduciary shall not cause the system to engage in a transaction if he or she knows or should know that the transaction is any of the following, either directly or indirectly:

(a) A sale or exchange or a leasing of any property from the system to a party in interest for less than the fair market value, or from a party in interest to the system for more than the fair market value.

(b) A lending of money or other extension of credit from the system to a party in interest without the receipt of adequate security and a reasonable rate of interest, or from a party in interest to the system with the provision of excessive security or at an unreasonably high rate of interest.

(c) A transfer to, or use by or for the benefit of, the political subdivision sponsoring the system of any assets of the system for less than adequate consideration.

(d) The furnishing of goods, services, or facilities from the system to a party in interest for less than adequate consideration, or from a party in interest to the system for more than adequate consideration.

(7) With respect to a system subject to this act, an investment fiduciary shall not do any of the following:

(a) Deal with the assets of the system in his or her own interest or for his or her own account.

(b) In his or her individual or any other capacity act in any transaction involving the system on behalf of a party whose interests are adverse to the interests of the system or the interest of its participants or participants' beneficiaries.

(c) Receive any consideration for his or her own personal account from any party dealing with the system in connection with a transaction involving the assets of the system.

(8) This section does not prohibit an investment fiduciary from doing any of the following:

(a) Receiving any benefit to which he or she may be entitled as a participant or participant's beneficiary of the system.

(b) Receiving any reimbursement of expenses properly and actually incurred in the performance of his or her duties for the system.

(c) Serving as an investment fiduciary in addition to being an officer, employee, agent, or other representative of the political subdivision sponsoring the system.

(d) Receiving agreed upon compensation for services from the system.

(9) Except for an employee of a system, this state, or the political subdivision sponsoring a system, when acting in the capacity as an investment fiduciary, an investment fiduciary who is qualified under section 12c(1)(b) shall meet 1 of the following requirements:

(a) Be a registered investment adviser under either the investment advisers act of 1940, 15 USC 80b-1 to 80b-21, or the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(b) Be a bank as defined under the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(c) Be an insurance company qualified under section 16(3).

(10) An investment fiduciary shall not invest in a debt instrument issued by a foreign country that has been identified by the United States state department as engaging in or sponsoring terrorism.

(11) A system shall annually publish and make available to the plan participants and beneficiaries a list of all expenses paid by soft dollars.

### **38.1139 Investment in real estate investment trust or real or personal property.**

Sec. 19. (1) An investment fiduciary may invest up to 5% of a system's assets in publicly or privately issued real estate investment trusts or in real or personal property otherwise qualified pursuant to section 15, 16, or 20c.

(2) In addition to investments authorized under subsection (1), an investment fiduciary of a system having assets of more than \$100,000,000.00 may do any of the following:

(a) Invest in, buy, sell, hold, improve, lease, or acquire by foreclosure or an agreement in lieu of foreclosure, real or personal property or an interest in real or personal property.

(b) Develop, maintain, operate, or lease the real or personal property referred to in subdivision (a).

(c) Form or invest in 1 or more limited partnerships, corporations, limited liability companies, trusts, or other organizational entities for which liability of an investor cannot exceed the amount of the investment under the laws of the United States or of any state, district, or territory of the United States or foreign country. The limited partnership, corporation, limited liability company, trust, or other organizational entity may invest in, buy, sell, hold, develop, improve, lease, or operate real or personal property, or originate a mortgage or invest in an annuity separate account that invests in real or personal property to hold title to, improve, lease, manage, develop, maintain, or operate real or personal property whether currently held or acquired after the effective date of the amendatory act that added this subdivision. An entity formed under this subdivision has the right to exercise all powers granted to the entity by the laws of the jurisdiction of formation, including, but not limited to, the power to borrow money in order to provide additional capital to benefit and increase the overall return on the investment held by the entity.

(d) Invest in investments otherwise qualified pursuant to subsection (1).

(3) Except as otherwise provided in this section, the aggregate investments made under subsection (2) shall not exceed 5% of the assets of the system. The purchase price of an investment made under this section shall not exceed the appraised value of the real or personal property.

(4) If the investment fiduciary of a system is the state treasurer, investments described in subsection (1) or (2) may exceed 5% of the assets of the system.

(5) An investment qualified under this section in which the underlying asset is an interest in real or personal property constitutes an investment under this section for the purpose

of meeting the asset limitations contained in this act. This subsection applies even though the investment may be qualified elsewhere in this act. Notwithstanding this subsection, an investment fiduciary may designate a real estate investment trust which satisfies the requirements of section 14(2) as an investment qualified under this section or as an investment in stock under section 14.

**38.1139a State treasurer as investment fiduciary; investments in private equity; limitation.**

Sec. 19a. If the investment fiduciary is the state treasurer, investments in private equity shall not be more than 30% of the total assets.

**38.1140d Investments not qualified under act.**

Sec. 20d. (1) An investment fiduciary of a system having assets of less than \$250,000,000.00 may invest not more than 5% of the system's assets in investments not otherwise qualified under this act, except as qualified in section 19a, whether the investments are similar or dissimilar to those specified in this act.

(2) An investment fiduciary of a system having assets of \$250,000,000.00 or more may invest not more than 10% of the system's assets in investments described in subsection (1).

(3) An investment fiduciary of a system having assets of \$1,000,000,000.00 or more may invest not more than 15% of the system's assets in investments described in subsection (1).

(4) An investment fiduciary of a system who is the state treasurer may invest not more than 20% of the system's assets in investments described in subsection (1).

(5) If an investment described in subsection (1) is subsequently determined to be permitted under another section of this act, then the investment shall no longer be included under this section.

(6) This section shall not be used to exceed a percentage of total assets limitation for an investment provided in any other section of this act.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**[No. 426]**

**(SB 362)**

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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 3902 (MCL 324.3902).

*The People of the State of Michigan enact:*

**324.3902 Phosphorus content.**

Sec. 3902. A person shall not sell, offer for sale, or distribute for sale or use in this state any of the following:

(a) Subject to subdivision (b), a cleaning agent that contains phosphorus in any form in excess of 8.7% by weight expressed as elemental phosphorus.

(b) A cleaning agent that is intended for use in household clothes washing machines and that contains phosphorus in any form in excess of 0.5% by weight expressed as elemental phosphorus.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 152 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**Compiler's note:** Senate Bill No. 152, referred to in enacting section 1, was filed with the Secretary of State January 6, 2009, and became 2008 PA 427, Imd. Eff. Jan. 6, 2009.

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**[No. 427]**

**(SB 152)**

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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 3902 (MCL 324.3902).

*The People of the State of Michigan enact:*

**324.3902 Phosphorus content; cleaning agent intended for use beginning July 1, 2010.**

Sec. 3902. A person shall not sell, offer for sale, or distribute for sale or use in this state any of the following:

(a) Subject to subdivision (b), a cleaning agent that contains phosphorus in any form in excess of 8.7% by weight expressed as elemental phosphorus.

(b) A cleaning agent that is intended for use in household clothes washing machines or, beginning July 1, 2010, in household dishwashers and that contains phosphorus in any form in excess of 0.5% by weight expressed as elemental phosphorus.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 362 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 6, 2009.

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**Compiler's note:** Senate Bill No. 362, referred to in enacting section 1, was filed with the Secretary of State January 6, 2009, and became 2008 PA 426, Imd. Eff. Jan. 6, 2009.

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**[No. 428]****(HB 5694)**

AN ACT to amend 1917 PA 350, entitled "An act to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act," by amending sections 4, 5, and 8 (MCL 445.404, 445.405, and 445.408), as amended by 2006 PA 675.

*The People of the State of Michigan enact:*

**445.404 Second hand or junk dealer; sign; prerequisites; record; inspection.**

Sec. 4. (1) A second hand dealer or junk dealer shall post in a conspicuous place in or upon its place of business a sign having its name and occupation.

(2) A second hand or junk dealer shall make and maintain a separate book or other written or electronic record, numbered consecutively, and open to inspection by a member of a local law enforcement agency and the Michigan state police, in which shall be written or entered in the English language at the time of the purchase or exchange of any article a description of the article, and all of the following:

(a) The name, description, fingerprint, operator's or chauffeur's license or state identification number, registration plate number, and address of the person from whom the article was purchased and received. The second hand dealer or junk dealer shall make a copy of the operator's license, chauffeur's license, or state identification card as part of the book or record.

(b) The day and hour the purchase or exchange was made.

(c) The location from which the item was obtained.

(d) Payment for an item shall be made only by check or by an electronic payment system. The record shall indicate the method of payment.

**445.405 Second hand or junk dealer; articles purchased or exchanged; retention; tagging; record; requirements; exceptions.**

Sec. 5. (1) The articles purchased or exchanged shall be retained by the purchaser for at least 15 days before disposing of them, in an accessible place in the building where the articles are purchased and received. A tag shall be attached to the articles in some visible and convenient place, with the number written thereupon, to correspond with the entry number in the book or other record.

(2) The purchaser shall prepare and deliver on Monday of each week to the chief of police or chief law enforcement officer of the local unit of government in which that business is

carried on, before 12 noon, a legible and correct paper or electronic copy, in the English language, from the book or other written or electronic record, containing a description of each article purchased or received during the preceding week, the hour and day when the purchase was made, the description of the person from whom it was purchased, and a copy of the documentation required under section 4 regarding the person from whom it was purchased. The statement shall be verified in a manner acceptable to the chief of police or chief law enforcement officer.

(3) This section does not apply to old rags, waste paper, and household goods except radios, televisions, record players, and electrical appliances and does not require the purchaser to retain articles purchased from individuals, firms, or corporations having a fixed place of business after those articles shall have been reported.

#### **445.408 Violation of act; penalties; remedies.**

Sec. 8. (1) Except as otherwise provided for in this section, a person who violates this act is guilty of a misdemeanor and shall be imprisoned for not more than 6 months and shall be fined not less than \$500.00 or more than \$1,000.00.

(2) A second hand or junk dealer who buys or sells scrap metal, knowing that it is stolen, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both. The penalties imposed under this subsection apply only to a first violation of this subsection.

(3) A second hand or junk dealer who buys or sells stolen scrap metal knowing that it was stolen 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 both. The penalties imposed under this subsection apply to a second or subsequent violation.

(4) The license of a person, corporation, copartnership, or firm that is found guilty of violating any of the provisions of this act shall be considered to be revoked upon entry of a conviction and such person, corporation, copartnership, or firm shall not be permitted to carry on the business of being a second hand or junk dealer within this state for a period of 1 year after that conviction.

(5) The remedies under this act are independent and cumulative. The use of 1 remedy by a person does not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

#### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

#### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 720.
- (b) Senate Bill No. 1114.
- (c) Senate Bill No. 1571.
- (d) House Bill No. 6181.

Approved January 5, 2009.

Filed with Secretary of State January 8, 2009.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 720 was filed with the Secretary of State January 8, 2009, and became 2008 PA 432, Eff. Apr. 1, 2009.  
Senate Bill No. 1114 was filed with the Secretary of State January 8, 2009, and became 2008 PA 431, Eff. Apr. 1, 2009.  
Senate Bill No. 1571 was filed with the Secretary of State January 8, 2009, and became 2008 PA 430, Eff. Apr. 1, 2009.  
House Bill No. 6181 was filed with the Secretary of State January 8, 2009, and became 2008 PA 429, Eff. Apr. 1, 2009.



**[No. 429]****(HB 6181)**

AN ACT to regulate the purchase and sale of certain nonferrous metals; to provide for disclosures by certain persons regarding certain transactions; to require the creation of records for certain purposes and for the use of certain databases by certain persons; and to provide for penalties and remedies.

*The People of the State of Michigan enact:*

**445.421 Short title.**

Sec. 1. This act shall be known and may be cited as the “nonferrous metal regulatory act”.

**445.423 Definitions.**

Sec. 3. As used in this act:

(a) “Dealer” means any person that is not a first purchaser who purchases nonferrous metals from any seller. Dealer includes, but is not limited to, a person, whether or not licensed under state law or local ordinance, that operates a business as a scrap metal recycler, scrap processor, secondhand and junk dealer, or other person who purchases any amount of nonferrous metal on a regular, sporadic, or 1-time basis. Dealer does not include an automotive recycler regulated by and complying with section 217 of the Michigan vehicle code, 1949 PA 300, MCL 257.217; section 18 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1318; or section 2 of 1986 PA 119, MCL 257.1352, when engaging in activities that meet the definition of automotive recycler as defined in section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

(b) “Documentation” means a signed statement that indicates where the person obtained the article, that the person is authorized to sell the article, or other evidence that reasonably demonstrates ownership of the article and the source of the article.

(c) “Ferrous metal” means a metal that contains significant quantities of iron or steel.

(d) “First purchaser” means the first buyer of a manufactured product containing nonferrous metal in a retail or business-to-business transaction. Persons purchasing nonferrous metal in violation of this act, automotive recyclers, pawnshops, scrap metal recyclers, and scrap processors are not considered first purchasers.

(e) “Industrial or commercial account” means any person, operating from a fixed location, that is a seller of ferrous or nonferrous metal to a scrap metal recycler pursuant to a written agreement.

(f) “Nonferrous metal” means a metal that does not contain significant quantities of ferrous metal but contains copper, brass, platinum-based metals, aluminum, bronze, lead, zinc, nickel, or alloys of those metals.

(g) “Person” means an individual, partnership, corporation, limited liability company, joint venture, trust, association, or other legal entity.

(h) “Public fixtures” means articles containing nonferrous metal that are used or located in areas open to the public and include, but are not limited to, utility access covers; street light poles and fixtures; road and bridge guard rails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; telecommunications cable; utility-related articles; and historical markers.

(i) “Record” means a paper, electronic, or other generally accepted method of storing information in a retrievable form.

(j) “Scrap metal recycler” means a person that purchases nonferrous metal that is intended for recycling or reuse, whether regarded as a scrap processor, core buyer, or other similar business operation.

(k) “Scrap processor” means that term as defined in section 3 of 1917 PA 350, MCL 445.403.

(l) “Seller” means any individual or person that either regularly, sporadically, or on a 1-time basis receives consideration from any other person from the purchase by a dealer of nonferrous metal offered by that seller.

#### **445.425 Dealers; sellers; duties.**

Sec. 5. (1) A dealer shall do all of the following:

(a) Produce and maintain records as required under section 7(2).

(b) Participate in a database meeting the requirements of section 11.

(c) Tag and hold any nonferrous metal as provided for in section 9.

(d) Pay a seller by a method capable of being traced from the dealer to the seller. Payment by cash or currency of more than \$50.00, barter, or trade is not considered a payment that complies with the requirement of this subdivision. Payment of cash in any amount in a transaction involving predominantly copper articles is considered a violation of this subdivision.

(e) In the case of a transaction involving nonferrous metal, verify that the seller is at least 16 years of age.

(2) A seller shall do all of the following:

(a) Present to the dealer an operator’s or chauffeur’s license, military identification card, Michigan identification card, passport, or other government-issued identification containing a photograph and allow the dealer to make a photocopy or electronic copy of the identification.

(b) Allow the dealer to make a thumbprint, to be used only for identification purposes by the dealer and for investigation purposes by a law enforcement agency.

(c) Execute a signed statement indicating that the seller is the owner of, or is otherwise authorized to sell, the nonferrous metal offered for purchase to the dealer.

(d) Attest to the lack of any criminal convictions involving the theft, conversion, or sale of nonferrous metals.

#### **445.427 Record of purchase transaction; maintenance; duration; location; contents of record of purchase transaction regarding nonferrous metal; exception.**

Sec. 7. (1) Except as otherwise provided in this subsection, a dealer shall produce and maintain an accurate and legible record of each purchase transaction. The dealer shall maintain the records produced under this section for at least 1 year; shall keep the records in a location that is readily accessible to a local, state, or federal law enforcement agency for inspection during normal business hours, and shall make the records, or copies of those records, available to any local, state, or federal law enforcement agency upon reasonable suspicion of violation of this act.

(2) The record of a purchase transaction regarding nonferrous metal shall contain all of the following:

(a) The name, address, and identifying number from the seller’s operator’s or chauffeur’s license, military identification card, Michigan identification card, passport, or other government-issued identification containing a photograph. A legible scan or photocopy of

the identification is considered satisfactory in fulfilling the requirement of this subdivision. In the case of a repeat seller, a copy of the information may be kept on file with the dealer and be used for future transactions.

(b) The license plate number of the vehicle delivering the nonferrous metal.

(c) The date and time of the transaction.

(d) A description of the predominant types of metal purchases, made in accordance with the custom of the trade.

(e) The weight, quantity, or volume of metal, made in accordance with the custom of the trade.

(f) The consideration paid and the method of payment.

(g) A signed statement from the seller that the seller is the owner of the metal or is otherwise authorized to sell the metal subject to the transaction.

(h) A thumbprint of the seller.

(3) In the case of a seller that is an industrial or commercial account where payment is made by a method capable of being traced from the dealer to the seller and payment is made directly to the business, the dealer is not required to produce the record described in subsection (2) so long as the personal and business identifying information of the industrial or commercial account seller is on file with the dealer and conforms to a written description of the type of nonferrous metal or articles customarily purchased by the dealer from that seller, and the information is periodically reviewed at least every 2 years and validated as current or updated by the dealer.

#### **445.429 Article containing nonferrous metal; tagging and holding by dealer required; circumstances; creation and maintenance of records; certain sales prohibited.**

Sec. 9. (1) A dealer shall tag and hold, for 7 calendar days, any article containing nonferrous metal purchased from a seller and that is offered for purchase under any of the following circumstances:

(a) The article has altered or obliterated serial numbers, and the person delivering the article does not have a written receipt or documentation.

(b) Where, due to the identification on the article or due to the type of article, the dealer would reasonably be considered to have knowledge that the article is, or was, the property of a governmental entity, and the person delivering the article does not have a written receipt or documentation.

(c) Where, due to the identification on the article, the dealer would reasonably be considered to have knowledge that the article is, or was, the property of a business, and the person delivering the article does not have a written receipt or documentation.

(d) The article is a commemorative, decorative, or other cemetery-related or apparently ceremonial article, and the person delivering the article does not have a written receipt or documentation.

(e) The article is subject to a notification or bulletin from any law enforcement agency that is received by the dealer prior to the purchase of the article.

(f) Where the article is copper wiring, whether burned or with sheathing, and the person delivering the article does not have a written receipt or documentation.

(2) The tag and hold requirements of this section require the dealer to also create and maintain the records required under section 7 regarding those articles.

(3) The tag and hold requirements of subsection (1) do not apply to any of the following:

(a) Any article containing nonferrous metal that does not conform to the circumstances described in subsection (1).

(b) Any article that has been the subject of tag and hold by 1 dealer in compliance with this section if that article is resold directly to another dealer. In addition, any article that was not initially subject to the tag and hold provisions of this section is not thereafter subject to the tag and hold provisions if that article is resold to another dealer.

(4) Except in the case where the seller has specific written documentation that the seller is the owner, agent, or person with authority to possess and sell certain articles, a seller shall not sell or offer for sale, and a dealer shall not purchase, any article containing nonferrous metal that is marked with any form of the name, initials, markings, or logo of a governmental entity, utility, cemetery, or railroad; any beer kegs; or any public fixtures. Any sale is subject to the provisions of this act.

#### **445.431 Database; registration with or subscription to required.**

Sec. 11. (1) A dealer shall register with or subscribe to, and maintain that registration or subscription with, an internet-based database available to dealers, law enforcement agencies, and the general public that lists and tracks, at a minimum, thefts of nonferrous metal and articles containing nonferrous metals. The database may be reasonably limited in terms of time and geographical area.

(2) The existing database established by the institute of scrap recycling industries, inc., referred to as the ISRI theft alert system, is considered an appropriate internet-based database. A dealer may register with or subscribe to any other database that provides substantially the same services as the database described in subsection (1).

#### **445.433 Violation of MCL 445.427(1) or 445.429 as misdemeanor; buying or selling stolen nonferrous metal articles as felony; penalties.**

Sec. 13. (1) A person who violates section 7(1) or section 9 knowing or having reason to know that he or she is violating those sections is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 93 days, or both.

(2) A person who buys or sells nonferrous metal articles knowing or having reason to know that they are stolen is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both, for a first offense and 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 both, for a second or subsequent offense.

#### **445.435 Violation of act as state civil infraction; fine.**

Sec. 15. A person violating this act knowing or having reason to know that he or she is violating this act is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$5,000.00.

#### **445.437 Private cause of action; damages; “value of the nonferrous metal article stolen” defined.**

Sec. 17. (1) A person may bring a private cause of action, in a court of competent jurisdiction, for monetary damages suffered from violation of this act by a seller or a dealer, or both.

(2) The court shall award treble damages for the value of the nonferrous metal article stolen. The court may award costs regarding any aspect of an action brought under subsection (1). As used in this subsection, “value of the nonferrous metal article stolen” means the greatest of the following:

(a) The replacement cost of the stolen article.

- (b) The cost of repairing the damage caused by the larceny of that article.
- (c) The total of subdivisions (a) and (b).

#### **445.439 Remedies.**

Sec. 19. (1) The remedies under this act are cumulative and do not affect the ability or right of any other person, local governmental unit, or state or federal governing unit to bring any action under this or any other civil, criminal, or regulatory act or ordinance that is otherwise not prohibited by law.

(2) This act does not exempt or release any person from the following:

- (a) Obtaining and maintaining a license under any other act or ordinance.
- (b) Complying with any strictures contained in any other act or ordinance.

#### **445.441 Effective date.**

Sec. 21. This act takes effect April 1, 2009.

#### **445.443 Conditional effective date.**

Sec. 23. This act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 720.
- (b) Senate Bill No. 1114.
- (c) Senate Bill No. 1571.
- (d) House Bill No. 5694.

Approved January 5, 2009.

Filed with Secretary of State January 8, 2009.

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**Compiler's note:** The bills referred to in MCL 445.443 were enacted into law as follows:

Senate Bill No. 720 was filed with the Secretary of State January 8, 2009, and became 2008 PA 432, Eff. Apr. 1, 2009.

Senate Bill No. 1114 was filed with the Secretary of State January 8, 2009, and became 2008 PA 431, Eff. Apr. 1, 2009.

Senate Bill No. 1571 was filed with the Secretary of State January 8, 2009, and became 2008 PA 430, Eff. Apr. 1, 2009.

House Bill No. 5694 was filed with the Secretary of State January 8, 2009, and became 2008 PA 428, Eff. Apr. 1, 2009.

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### **[No. 430]**

#### **(HB 1571)**

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of

probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 14h of chapter XVII (MCL 777.14h), as amended by 2008 PA 65.

*The People of the State of Michigan enact:*

CHAPTER XVII

**777.14h Applicability of chapter to certain felonies; MCL 445.65 to 445.2507(2).**

Sec. 14h. This chapter applies to the following felonies enumerated in chapter 445 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
445.65	Pub ord	E	Identity theft	5
445.67	Pub ord	E	Obtain, possess, sell, or transfer personal identifying information of another or falsify a police report with intent to commit identity theft	5
445.408(2)	Pub ord	E	Buying or selling stolen scrap metal	5
445.408(3)	Pub ord	E	Buying or selling stolen scrap metal — second or subsequent offense	5
445.433(2)	Pub ord	E	Knowingly buying or selling stolen nonferrous metal articles	5
445.487(2)	Pub ord	H	Precious metal and gem dealer failure to record material matter — subsequent offense	2
445.488(2)	Pub ord	H	Precious metal and gem dealer violations — subsequent offense	2
445.489	Pub ord	H	Precious metal and gem dealer violations	2
445.490	Pub ord	H	Precious metal and gem dealer failure to obtain a certificate of registration	2
445.779	Pub ord	H	Antitrust violation	2
445.1505	Pub trst	G	Franchise investment law — fraudulent filing/offers	7
445.1508	Pub trst	G	Franchise investment law — sale without proper disclosure	7

445.1513	Pub trst	G	Franchise investment law — illegal offers/sales	7
445.1520	Pub trst	G	Franchise investment law — keeping records	7
445.1521	Pub trst	G	Franchise investment law — false representation	7
445.1523	Pub trst	G	Franchise investment law — false statements of material fact	7
445.1525	Pub trst	G	Franchise investment law — false advertising	7
445.1528	Pub trst	D	Pyramid/chain promotions — offer or sell	7
445.1671	Pub trst	E	Mortgage brokers, lenders — knowingly giving a false statement	15
445.2507(2)	Pub ord	F	Violation of unsolicited commercial e-mail protection act in furtherance of crime	4

### Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 720.
- (b) Senate Bill No. 1114.
- (c) House Bill No. 5694.
- (d) House Bill No. 6181.

### Effective date.

Enacting section 2. This amendatory act takes effect April 1, 2009.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 8, 2009.

**Compiler's note:** The bills referred to in enacting section 1 were enacted into law as follows:

Senate Bill No. 720 was filed with the Secretary of State January 8, 2009, and became 2008 PA 432, Eff. Apr. 1, 2009.  
Senate Bill No. 1114 was filed with the Secretary of State January 8, 2009, and became 2008 PA 431, Eff. Apr. 1, 2009.  
House Bill No. 5694 was filed with the Secretary of State January 8, 2009, and became 2008 PA 428, Eff. Apr. 1, 2009.  
House Bill No. 6181 was filed with the Secretary of State January 8, 2009, and became 2008 PA 429, Eff. Apr. 1, 2009.

## [No. 431]

### (SB 1114)

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 and remedies; 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 356 (MCL 750.356), as amended by 1998 PA 311.

*The People of the State of Michigan enact:*

**750.356 Larceny; property; penalties; total value of property stolen; enhanced sentence; prior convictions; “nonferrous metal” defined.**

Sec. 356. (1) A person who commits larceny by stealing any of the following property of another person is guilty of a crime as provided in this section:

(a) Money, goods, or chattels.

(b) A bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order, or certificate.

(c) A book of accounts for or concerning money or goods due, to become due, or to be delivered.

(d) A deed or writing containing a conveyance of land or other valuable contract in force.

(e) A receipt, release, or defeasance.

(f) A writ, process, or public record.

(g) Nonferrous metal.

(2) 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 property stolen, whichever is greater, or both imprisonment and a fine:

(a) The property stolen has a value of \$20,000.00 or more.

(b) The person violates subsection (3)(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 (4)(b) or (5).

(3) 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 property stolen, whichever is greater, or both imprisonment and a fine:

(a) The property stolen has a value of \$1,000.00 or more but less than \$20,000.00.

(b) The person violates subsection (4)(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 (4)(b) or (5).

(4) 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 property stolen, whichever is greater, or both imprisonment and a fine:

(a) The property stolen has a value of \$200.00 or more but less than \$1,000.00.

(b) The person violates subsection (5) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(5) If the property stolen 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 property stolen, whichever is greater, or both imprisonment and a fine.

(6) If the property stolen is nonferrous metal, then, as used in this section, “the value of the property stolen” means the greatest of the following:

- (a) The replacement cost of the stolen nonferrous metal.
- (b) The cost of repairing the damage caused by the larceny of the nonferrous metal.
- (c) The sum of subdivisions (a) and (b).

(7) The values of property stolen 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 property stolen.

(8) 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.

(9) 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 pursuant to 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.

(10) As used in this section, “nonferrous metal” means a metal that does not contain significant quantities of ferrous metal but contains copper, brass, platinum-based metals, aluminum, bronze, lead, zinc, nickel, or alloys of those metals.

### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2009.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 720.
- (b) Senate Bill No. 1571.
- (c) House Bill No. 5694.
- (d) House Bill No. 6181.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 8, 2009.

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**Compiler’s note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 720 was filed with the Secretary of State January 8, 2009, and became 2008 PA 432, Eff. Apr. 1, 2009.  
Senate Bill No. 1571 was filed with the Secretary of State January 8, 2009, and became 2008 PA 430, Eff. Apr. 1, 2009.  
House Bill No. 5694 was filed with the Secretary of State January 8, 2009, and became 2008 PA 428, Eff. Apr. 1, 2009.  
House Bill No. 6181 was filed with the Secretary of State January 8, 2009, and became 2008 PA 429, Eff. Apr. 1, 2009.

**[No. 432]****(SB 720)**

AN ACT to amend 1917 PA 350, entitled “An act to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act,” by amending sections 1 and 2 (MCL 445.401 and 445.402), as amended by 2006 PA 675.

*The People of the State of Michigan enact:*

**445.401 Second hand or junk dealer; license required; internet drop-off store exempt from licensure; articles of nonferrous metals; compliance required.**

Sec. 1. (1) A person, corporation, copartnership, or firm shall not carry on the business of dealer in second hand goods or junk dealer in any of the counties, cities, or villages of this state without having first obtained, from the mayor of the city or the chief executive officer of the county or village where the business is to be carried on, a license under this act authorizing that person, corporation, copartnership, or firm to carry on that business.

(2) This section does not require an internet drop-off store complying with subsection (3), or a person engaged in the sale, purchase, consignment, or trade of personal property or other valuable thing for himself or herself, to obtain a license under this act.

(3) An internet drop-off store in compliance with the following conditions is exempt from licensure as a second hand dealer or junk dealer under this act:

(a) Has a fixed place of business within this state except that he or she exclusively transacts all purchases or sales by means of the internet and the purchases and sales are not physically transacted on the premises of that fixed place of business.

(b) Has the personal property or other valuable thing available on a website for viewing by photograph, if available, by the general public at no charge, which website shall be searchable by zip code or state, or both. The website viewing shall include, as applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(c) Maintains records of the sale, purchase, consignment, or trade of the personal property or other valuable thing for at least 2 years, which records shall contain a description, including a photograph, if available, and, if applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(d) Provide the local law enforcement agency with any name under which it conducts business on the website and access to the business premises at any time during normal business hours for purposes of inspection.

(e) Within 24 hours after a request from a local law enforcement agency, provide an electronic copy of the seller's or consignor's name, address, telephone number, driver license number and issuing state, the buyer's name and address if applicable, and a description of the personal property or other valuable thing as described in subdivision (c). The provision of information shall be in a format acceptable to the local law enforcement agency but shall at least be in a legible format and in the English language.

(f) Provide that payment for the personal property or other valuable thing is executed by means of check or other electronic payment system, so long as the payment is not made in cash. No payment shall be provided to the seller until the item is sold.

(g) Immediately remove the personal property or other valuable thing from the website if the local law enforcement agency determines that the personal property or other valuable thing is stolen.

(4) This section does not exempt a person purchasing or selling articles of nonferrous metals from compliance with the nonferrous metal regulatory act.

**445.402 Second hand or junk dealer; license, issuance; terms; transferability; fee; inspection.**

Sec. 2. (1) The mayor of a city or chief executive officer of a county or village may grant to any person, corporation, copartnership, or firm, a license authorizing that person, corporation, copartnership, or firm to carry on the business of a second hand dealer or junk dealer subject to the provisions of this act.

(2) The license shall designate the particular place where that person, corporation, copartnership, or firm shall carry on that business. The business shall be conducted only in the place designated in the license.

(3) The license shall be for the period of 1 year from date of issuance unless sooner revoked for cause and is not transferable. The legislative body of any city, or the trustees and chief executive officer of any county or village, shall establish the fee for the processing and issuance of the license in accordance with its charter or local ordinance, based upon the cost of issuance and administration of that license.

(4) The city, village, or county may inspect the premises of a licensed second hand or junk dealer during normal business hours.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 1114.
- (b) Senate Bill No. 1571.
- (c) House Bill No. 5694.
- (d) House Bill No. 6181.

**Effective date.**

Enacting section 2. This amendatory act takes effect April 1, 2009.

This act is ordered to take immediate effect.

Approved January 5, 2009.

Filed with Secretary of State January 8, 2009.

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**Compiler's note:** The bills referred to in enacting section 1 were enacted into law as follows:  
Senate Bill No. 1114 was filed with the Secretary of State January 8, 2009, and became 2008 PA 431, Eff. Apr. 1, 2009.  
Senate Bill No. 1571 was filed with the Secretary of State January 8, 2009, and became 2008 PA 430, Eff. Apr. 1, 2009.  
House Bill No. 5694 was filed with the Secretary of State January 8, 2009, and became 2008 PA 428, Eff. Apr. 1, 2009.  
House Bill No. 6181 was filed with the Secretary of State January 8, 2009, and became 2008 PA 429, Eff. Apr. 1, 2009.

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**[No. 433]**

**(SB 1038)**

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the

interrelation of this act with other acts; and to make appropriations,” by amending section 111 (MCL 208.1111), as amended by 2007 PA 207.

*The People of the State of Michigan enact:*

**208.1111 Definitions; G to O.**

Sec. 111. (1) “Gross receipts” means the entire amount received by the taxpayer as determined by using the taxpayer’s method of accounting used for federal income tax purposes, less any amount deducted as bad debt for federal income tax purposes that corresponds to items of gross receipts included in the modified gross receipts tax base for the current tax year or a past tax year phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

(a) Proceeds from sales by a principal that the taxpayer collects in an agency capacity solely on behalf of the principal and delivers to the principal.

(b) Amounts received by the taxpayer as an agent solely on behalf of the principal that are expended by the taxpayer for any of the following:

(i) The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person.

(ii) The performance of a service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform.

(iii) Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.

(iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.

(v) Property not described under subparagraph (iv) that is purchased by the taxpayer on behalf of the principal and that the taxpayer does not take title to or use in the course of performing its contractual business activities.

(vi) Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal.

(c) Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under section 883(a) of the internal revenue code.

(d) Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.

(e) Amounts received by a newspaper to acquire advertising space not owned by that newspaper in another newspaper on behalf of another person. This subdivision does not apply to any consideration received by the taxpayer for acquiring that advertising space.

(f) Notwithstanding any other provision of this section, amounts received by a taxpayer that manages real property owned by a third party that are deposited into a separate account kept in the name of that third party and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that third party.

(g) Proceeds from the taxpayer’s transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a taxpayer that during the tax year both buys and sells any receivables.

(h) Proceeds from any of the following:

(i) The original issue of stock or equity instruments or equity issued by a regulated investment company as that term is defined under section 851 of the internal revenue code.

(ii) The original issue of debt instruments.

(i) Refunds from returned merchandise.

(j) Cash and in-kind discounts.

(k) Trade discounts.

(l) Federal, state, or local tax refunds.

(m) Security deposits.

(n) Payment of the principal portion of loans.

(o) Value of property received in a like-kind exchange.

(p) Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible, intangible, or real property, less any gain from the disposition or reorganization to the extent that the gain is included in the taxpayer's federal taxable income, if the property satisfies 1 or more of the following:

(i) The property is a capital asset as defined in section 1221(a) of the internal revenue code.

(ii) The property is land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code.

(iii) The property is used in a hedging transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily to manage the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; interest rate fluctuations; or commodity price fluctuations. For purposes of this subparagraph, the actual transfer of title of real or tangible personal property to another person is not a hedging transaction. Only the overall net gain from the hedging transactions entered into during the tax year is included in gross receipts. As used in this subparagraph, "hedging transaction" means that term as defined under section 1221 of the internal revenue code regardless of whether the transaction was identified by the taxpayer as a hedge for federal income tax purposes, provided, however, that transactions excluded under this subparagraph and not identified as a hedge for federal income tax purposes shall be identifiable to the department by the taxpayer as a hedge in its books and records.

(iv) The property is investment and trading assets managed as part of the person's treasury function. For purposes of this subparagraph, a person principally engaged in the trade or business of purchasing and selling investment and trading assets is not performing a treasury function. Only the overall net gain from the treasury function incurred during the tax year is included in gross receipts. As used in this subparagraph, "treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying the cash flow or liquidity needs of the taxpayer's trade or business.

(q) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.

(r) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or (5) of the securities exchange act of 1934, 15 USC 78c, or a person included in the unitary business group of that broker or dealer that

buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, amounts realized from the repayment, maturity, sale, or redemption of the principal of a loan, bond, or mutual fund, certificate of deposit, or similar marketable instrument provided such instruments are not held as inventory.

(s) For a sales finance company, as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under section 78c(a)(4) or (5) of the securities exchange act of 1934, 15 USC 78c, or a person included in the unitary business group of that broker or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(t) For a mortgage company, proceeds representing the principal balance of loans transferred or sold in the tax year. For purposes of this subdivision, “mortgage company” means a person that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and has greater than 90% of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

(u) For a professional employer organization, any amount charged by a professional employer organization that represents the actual cost of wages and salaries, benefits, worker’s compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer arrangement.

(v) Any invoiced items used to provide more favorable floor plan assistance to a person subject to the tax imposed under this act than to a person not subject to this tax and paid by a manufacturer, distributor, or supplier.

(w) For an individual, estate, or other person organized for estate or gift planning purposes, amounts received other than those from transactions, activities, and sources in the regular course of the taxpayer’s trade or business. For purposes of this subdivision, all of the following apply:

(i) Amounts received from transactions, activities, and sources in the regular course of the taxpayer’s business include, but are not limited to, the following:

(A) Receipts from tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes integral parts of the taxpayer’s regular trade or business operations.

(B) Receipts received in the course of the taxpayer’s trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(C) Receipts derived from isolated sales, leases, assignments, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving tangible, intangible, or real property if the property is or was used in the taxpayer’s trade or business operation.

(D) Receipts derived from the sale of an interest in a business that constitutes an integral part of the taxpayer’s regular trade or business.

(E) Receipts derived from the lease or rental of real property.

(ii) Receipts excluded from gross receipts include, but are not limited to, the following:

(A) Receipts derived from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the taxpayer’s trade or business.

(B) Receipts derived from the disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(x) Receipts derived from investment activity by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common trust fund established under the collective investment funds act, 1941 PA 174, MCL 555.101 to 555.113. For purposes of this subdivision, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendent of that individual or related person, or a trust benefiting that individual or 1 or more persons related to that individual.

(y) Interest income and dividends derived from obligations or securities of the United States government, this state, or any governmental unit of this state. As used in this subdivision, “governmental unit” means that term as defined in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053.

(z) Dividends and royalties received or deemed received from a foreign operating entity or a person other than a United States person, including, but not limited to, the amounts determined under section 78 of the internal revenue code and sections 951 to 964 of the internal revenue code, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(aa) To the extent not deducted as purchases from other firms under section 203, each of the following:

(i) Sales or use taxes collected from or reimbursed by a consumer or other taxes the taxpayer collected directly from or was reimbursed by a purchaser and remitted to a local, state, or federal tax authority, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(ii) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the internal revenue code or other applicable state law, phased in over a 3-year period starting with 60% of that amount in the 2008 tax year, 75% in the 2009 tax year, and 100% in the 2010 tax year and each tax year thereafter.

(iii) In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, an amount equal to federal and state excise taxes paid by any person on such motor fuel under section 4081 of the internal revenue code or under other applicable state law, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(iv) In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, an amount equal to federal and state excise taxes paid by any person on or for such beer, wine, or intoxicating liquor under subtitle E of the internal revenue code or other applicable state law, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(v) In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority

and authorized to be charged on a customer's bill or invoice, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

(vi) In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, ordinance, regulation, ruling, or other legal authority and authorized to be charged on a customer's bill or invoice, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter. This subparagraph does not include the recovery of net income taxes, net worth taxes, property taxes, or the tax imposed under this act.

(vii) Any deposit required under any of the following, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter:

(A) 1976 IL 1, MCL 445.571 to 445.576.

(B) R 436.1629 of the Michigan administrative code.

(C) R 436.1723a of the Michigan administrative code.

(D) Any substantially similar beverage container deposit law of another state.

(viii) An excise tax collected pursuant to the airport parking tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or reimbursed by a consumer and remitted as provided in the airport parking tax act, 1987 PA 248, MCL 207.371 to 207.383, phased in over a 5-year period starting with 50% of that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012 tax year and each tax year thereafter.

(bb) Amounts attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation whose business activities are taxable under section 203 or would be subject to the tax under section 203 if the business activities were in this state. For purposes of this subdivision:

(i) "Cooperative corporation" means those organizations described under subchapter T of the internal revenue code.

(ii) "Pass-through" entity means a partnership, subchapter S corporation, or other person, other than an individual, that is not classified for federal income tax purposes as an association taxed as a corporation.

(iii) "Real estate investment trust" means that term as defined under section 856 of the internal revenue code.

(iv) "Regulated investment company" means that term as defined under section 851 of the internal revenue code.

(cc) For a regulated investment company as that term is defined under section 851 of the internal revenue code, receipts derived from investment activity by that regulated investment company.

(dd) For fiscal years that begin after September 30, 2009, unless the state budget director certifies to the state treasurer by January 1 of that fiscal year that the federally certified rates for actuarial soundness required under 42 CFR 438.6 and that are specifically developed for Michigan's health maintenance organizations that hold a contract with this state for medicaid services provide explicit adjustment for their obligations required for payment



of the tax under this act, amounts received by the taxpayer during that fiscal year for medicaid premium or reimbursement of costs associated with service provided to a medicaid recipient or beneficiary.

(2) “Insurance company” means an authorized insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.

(3) “Internal revenue code” means the United States internal revenue code of 1986 in effect on January 1, 2008 or, at the option of the taxpayer, in effect for the tax year.

(4) “Inventory” means, except as provided in subdivision (e), all of the following:

(a) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.

(b) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person.

(c) For a person that is a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, floor plan interest expenses for new motor vehicles. For purposes of this subdivision, “floor plan interest” means interest paid that finances any part of the person’s purchase of new motor vehicle inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a person subject to the tax imposed under this act than to a person not subject to this tax is considered interest paid by a manufacturer, distributor, or supplier.

(d) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, broker, or dealer that buys and sells for its own account, contracts that are subject to the commodity exchange act, 7 USC 1 to 27f, the cost of securities as defined under section 475(c)(2) of the internal revenue code and for a securities trader the cost of commodities as defined under section 475(e)(2) and for a broker or dealer the cost of commodities as defined under section 475(e)(2)(b), (c), and (d) of the internal revenue code, excluding interest expense other than interest expense related to repurchase agreements. As used in this subdivision:

(i) “Broker” means that term as defined under section 78c(a)(4) of the securities exchange act of 1934, 15 USC 78c.

(ii) “Dealer” means that term as defined under section 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

(iii) “Securities trader” means a person that engages in the trade or business of purchasing and selling investments and trading assets.

(e) Inventory does not include either of the following:

(i) Personal property under lease or principally intended for lease rather than sale.

(ii) Property allowed a deduction or allowance for depreciation or depletion under the internal revenue code.

(5) “Officer” means an officer of a corporation other than a subchapter S corporation, including all of the following:

(a) The chairperson of the board.

(b) The president, vice president, secretary, or treasurer of the corporation or board.

(c) Persons performing similar duties to persons described in subdivisions (a) and (b).

### **Effective date; retroactive.**

Enacting section 1. This amendatory act is retroactive and effective for taxes levied on and after January 1, 2008.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1052 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

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**Compiler's note:** Senate Bill No. 1052, referred to in enacting section 2, was filed with the Secretary of State January 9, 2009, and became 2008 PA 434, Eff. Jan. 1, 2008.

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**[No. 434]****(SB 1052)**

AN ACT to amend 2007 PA 36, entitled “An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations,” by amending sections 109 and 403 (MCL 208.1109 and 208.1403), section 403 as amended by 2007 PA 145, and by adding section 461.

*The People of the State of Michigan enact:*

**208.1109 Definitions; E and F.**

Sec. 109. (1) “Employee” means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes is prima facie considered an employee.

(2) “Employer” means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes is prima facie considered an employer.

(3) “Federal taxable income” means taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) and section 199 of the internal revenue code were not in effect.

(4) “Financial institution” means that term as defined under chapter 2B.

(5) “Foreign operating entity” means a United States person that satisfies each of the following:

(a) Would otherwise be a part of a unitary business group that has at least 1 person included in the unitary business group that is taxable in this state.

(b) Has substantial operations outside the United States, the District of Columbia, any territory or possession of the United States except for the commonwealth of Puerto Rico, or a political subdivision of any of the foregoing.

(c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the internal revenue code.

**208.1403 Allowable total combined credit; limitation; tax credit; payments by professional employer organization; calculation; tax year in which negative credit is calculated; credit claimed under MCL 208.1405; taxpayer engaged in furnishing electric and gas utility service.**

Sec. 403. (1) Notwithstanding any other provision in this act, the credits provided in this section shall be taken before any other credit under this act. Except as otherwise provided in subsection (6), for the 2008 tax year, the total combined credit allowed under this section shall not exceed 50% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. For the 2009 tax year and each tax year after 2009, the total combined credit allowed under this section shall not exceed 52% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281.

(2) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 0.296% of the taxpayer's compensation in this state. For the 2009 tax year and each tax year after 2009, subject to the limitation in subsection (1), a taxpayer may claim a credit against the tax imposed by this act equal to 0.370% of the taxpayer's compensation in this state. For purposes of this subsection, a taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B. A professional employer organization shall not include payments by the professional employer organization to the officers and employees of a client of the professional employer organization whose employment operations are managed by the professional employer organization. A client may include payments by the professional employer organization to the officers and employees of the client whose employment operations are managed by the professional employer organization.

(3) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c). Subject to the limitation in subsection (1), for the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 2007 and subsequently transferred into this state and purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the

credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201.

(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or this act, that were eligible for a credit under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer.

(4) For a tax year in which the amount of the credit calculated under subsection (3) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(5) A taxpayer that claims a credit under this section is not prohibited from claiming a credit under section 405. However, the taxpayer shall not claim a credit under this section and section 405 based on the same costs and expenses.

(6) For a taxpayer primarily engaged in furnishing electric and gas utility service that makes capital investments in electric and gas distribution assets for which a portion of the credit provided under subsection (3) would be denied for the 2008 tax year by reason of the 50% limitation of subsection (1), the 50% limitation on the total combined credit for the 2008 tax year provided in subsection (1) shall be increased by an amount not to exceed the lesser of the amount of the denied credit or 50% of the tax increase under this act accrued for financial reporting purposes due to the elimination of the deduction under section 168(k) of the internal revenue code by the amendatory act that added this subsection. Provided, however, that the total combined credit allowed under this section for the 2008 tax year shall not exceed 80% of the tax liability imposed under this act after the imposition and levy of the surcharge under section 281.

### **208.1461 Tax credit by taxpayer other than regulated utility.**

Sec. 461. For tax years beginning after December 31, 2008 and ending before January 1, 2011, a taxpayer other than a regulated utility may claim a credit under this act equal to 0.42% of the amount of the deduction claimed for the 2008 tax year for bonus depreciation under section 168(k) of the internal revenue code apportioned as the tax base is apportioned under this act. If the amount of the credit exceeds the liability of the taxpayer, the excess shall not be refunded but may be carried forward for 10 years or until used up, whichever occurs first.

#### **Effective date; retroactive.**

Enacting section 1. This amendatory act is retroactive and is effective January 1, 2008.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1038 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

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**Compiler's note:** Senate Bill No. 1038, referred to in enacting section 2, was filed with the Secretary of State January 9, 2009, and became 2008 PA 433, Imd. Eff. Jan. 1, 2008.

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**[No. 435]****(SB 1009)**

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," by amending section 207 (MCL 208.1207).

*The People of the State of Michigan enact:*

**208.1207 Tax exemptions; farmers' cooperative corporation; foreign person subject to tax; calculation of business income tax base; definitions.**

Sec. 207. (1) Except as otherwise provided in this section, the following are exempt from the tax imposed by this act:

(a) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of the United States, this state, and other states, including any grantor trust established by a municipality with the municipality as the grantor and exempt from federal income tax under the internal revenue code.

(b) A person who is exempt from federal income tax under the internal revenue code, and a partnership, limited liability company, joint venture, general partnership, limited partnership, unincorporated association, or other group or combination of entities acting as a unit if the activities of the entity are exclusively related to the charitable, educational, or other purpose or function that is the basis for the exemption under the internal revenue code from federal income taxation of the partners or members and if all of the partners or members of the entity are exempt from federal income tax under the internal revenue code, except the following:

(i) An organization included under section 501(c)(12) or 501(c)(16) of the internal revenue code.

(ii) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code except that it failed to meet the requirements in section 501(c)(12) that 85% or more of its income consist of amounts collected from members.

(iii) The tax base attributable to the activities giving rise to the unrelated taxable business income of an exempt person.

(c) A nonprofit cooperative housing corporation. As used in this subdivision, “nonprofit cooperative housing corporation” means a cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest on stock or membership investment but that does distribute all earnings to its stockholders or members. The exemption under this subdivision does not apply to a business activity of a nonprofit cooperative housing corporation other than providing housing services to its stockholders and members.

(d) That portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. “Production of agricultural goods” means commercial farming, including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; or turf or tree farming, but does not include the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

(e) Except as provided in subsection (2), a farmers’ cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under subdivision (b) because the corporation was exempt from federal income taxes under section 521 of the internal revenue code and that would continue to be exempt under section 521 of the internal revenue code except for either of the following activities:

(i) The corporation’s repurchase from nonproducer customers of portions or components of commodities the corporation markets to those nonproducer customers and the corporation’s subsequent manufacturing or marketing of the repurchased portions or components of the commodities.

(ii) The corporation’s incidental or emergency purchases of commodities from nonproducers to facilitate the manufacturing or marketing of commodities purchased from producers.

(f) That portion of the tax base attributable to the direct and indirect marketing activities of a farmers’ cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, if those marketing activities are provided on behalf of the members of that corporation and are related to the members’ direct sales of their products to third parties or, for livestock, are related to the members’ direct or indirect sales of that product to third parties. Marketing activities for a product that is not livestock are not exempt under this subdivision if the farmers’ cooperative corporation takes physical possession of the product. As used in this subdivision, “marketing activities” means activities that include, but are not limited to, all of the following:

(i) Activities under the agricultural commodities marketing act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

(ii) Dissemination of market information.

(iii) Establishment of price and other terms of trade.

(iv) Promotion.

(v) Research relating to members’ products.

(g) That portion of the tax base attributable to the services provided by an attorney-in-fact to a reciprocal insurer pursuant to chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200 to 500.7234.

(h) That portion of the tax base attributable to a multiple employer welfare arrangement that provides dental benefits only and that has a certificate of authority under chapter 70 of the insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

(i) A foreign person is not subject to taxation under this act if the foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States. If a foreign person is domiciled in a subnational jurisdiction that does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, that foreign person is not subject to taxation under this act if that subnational business tax is not imposed on a similarly situated person domiciled in this state whose presence in the foreign country is the same as the foreign person's presence in the United States.

(2) Subsection (1)(e) does not exempt a farmers' cooperative corporation if the total dollar value of the farmers' cooperative corporation's incidental and emergency purchases described in subsection (1)(e)(ii) are equal to or greater than 5% of the corporation's total purchases.

(3) Except as otherwise provided in this section, a farmers' cooperative corporation that is structured to allocate net earnings in the form of patronage dividends as defined in section 1388 of the internal revenue code to its farmer or farmer cooperative corporation patrons shall exclude from its adjusted tax base the revenue and expenses attributable to business transacted with its farmer or farmer cooperative corporation patrons.

(4) Notwithstanding any other provision of this act to the contrary, a foreign person subject to tax under this act shall calculate its business income tax base and modified gross receipts tax base under this section. Except as otherwise provided in this section, the business income tax base and modified gross receipts tax base of a foreign person is subject to all adjustments and other provisions of this act. However, neither the business income tax base nor the modified gross receipts tax base shall include proceeds from sales where title passes outside the United States.

(5) Except as otherwise provided in this section, the modified gross receipts tax base of a foreign person includes the sum of gross receipts and the adjustments under section 203 that are related to United States business activity.

(6) Except as otherwise provided in this section, the business income tax base of a foreign person includes the sum of business income and the adjustments under section 201 that are related to United States business activity.

(7) The sales factor for a foreign person is a fraction, the numerator of which is the taxpayer's total sales in this state where title passes inside the United States during the tax year and the denominator of which is the taxpayer's total sales in the United States where title passes inside the United States during the tax year.

(8) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both within and outside the United States to the extent the recipient receives benefit of the services within the United States.

(b) "Domiciled" means the location of the headquarters of the trade or business from which the trade or business of the foreign person is principally managed and directed.

(c) For subsection (1)(b), “exclusively” means that term as applied for purposes of section 501(c)(3) of the internal revenue code.

(d) “Foreign person” means either of the following:

(i) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

(ii) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

(e) “Gross receipts” means, for a foreign person, gross receipts as defined in section 111(1) from United States business activity or from sources within the United States. Gross receipts include all sales for which title transfers within the United States; proceeds from all services performed within the United States; and a pro rata portion of proceeds from services performed both within and outside of the United States to the extent the recipient receives benefit of the services within the United States.

**Effective date as retroactive; applicability.**

Enacting section 1. This amendatory act is retroactive and effective January 1, 2008 and applies to all business activity occurring after December 31, 2007.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1038 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

**Compiler's note:** Senate Bill No. 1038, referred to in enacting section 2, was filed with the Secretary of State January 9, 2009, and became 2008 PA 433, Imd. Eff. Jan. 1, 2008.

**[No. 436]**

**(HB 4380)**

AN ACT to amend 2004 PA 175, entitled “An act to impose taxes and create credits and refundable credits to modify and equalize the impact of changes made to the general sales tax act and use tax act necessary to bring those taxes into compliance with the streamlined sales tax agreement so this state may participate in the streamlined sales tax system and governing board; to prescribe certain powers and duties of certain state departments; and to provide for the disbursement of certain proceeds,” (MCL 205.171 to 205.191) by adding section 12.

*The People of the State of Michigan enact:*

**205.182 Sale of motor vehicle to group designated by automobile manufacturer; calculation of credit; refund; conditions; reduction in sales tax.**

Sec. 12. (1) For a transaction occurring after December 31, 1999, a taxpayer may calculate a credit and seek a refund from the department under this act in an amount equal to 6% of the consideration received by that taxpayer from an automobile manufacturer to reimburse



that taxpayer for a discount or price reduction given on the sale of a motor vehicle to a member of a group designated by an automobile manufacturer as entitled to a price identified on the automobile manufacturer's invoice to the automobile dealer that the automobile manufacturer requires the automobile dealer to charge that vehicle purchaser, if all of the following conditions are met:

(a) The motor vehicle purchaser was not employed by that automobile manufacturer at the time the discount or price reduction was given.

(b) The taxpayer calculating the credit and seeking the refund did not reimburse himself or herself by adding sales tax on that portion of the sales price received from an automobile manufacturer.

(c) The amount of the credit or refund does not exceed the actual amount of sales tax paid on that portion of the sales price received from an automobile manufacturer by the taxpayer calculating the credit and seeking the refund.

(2) At the option of the taxpayer, the credit and refund provided in this section may be applied to reduce the sales tax due and the procedures implementing those sales tax payment obligations.

### **Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 5555.

(b) House Bill No. 5556.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

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**Compiler's note:** House Bill No. 5555, referred to in enacting section 1, was filed with the Secretary of State January 9, 2009, and became 2008 PA 438, Imd. Eff. Jan. 9, 2009.

House Bill No. 5556, also referred to in enacting section 1, was filed with the Secretary of State January 9, 2009, and became 2008 PA 439, Imd. Eff. Jan. 9, 2009.

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## **[No. 437]**

### **(HB 5554)**

AN ACT to amend 2004 PA 174, entitled "An act to provide for a streamlined system of sales and use tax collection; to prescribe the requirements necessary for this state to adopt a multistate agreement; to provide for a board with certain powers and duties; to provide for the registration of sellers who select a model of collection and remittance; to forgive liability of collection of sales and use taxes on past transactions for certain sellers; to assure privacy of buyers; and to prescribe certain powers and duties of state officials and state departments," by amending section 25 (MCL 205.825).

*The People of the State of Michigan enact:*

### **205.825 Certified service provider as seller's agent.**

Sec. 25. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due to this

state on all sales transactions it processes for the seller unless the seller made a material misrepresentation or committed fraud.

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

(3) A certified service provider or a seller that uses a certified automated system shall be relieved from liability for sales tax and use tax if it relied on the department's determination that the software program submitted to the board for certification as a certified automated system under the agreement accurately reflected the taxability of the product categories included in the software program. The relief from liability under this section does not apply if a certified service provider or a seller that uses a certified automated system has incorrectly classified an item or transaction into a product category of the certified automated system.

(4) As provided in section 12(9) of the general sales tax act, 1933 PA 167, MCL 205.62, a certified service provider shall be considered a seller and shall be eligible for relief from liability for sales tax as provided in section 12 of the general sales tax act, 1933 PA 167, MCL 205.62.

This act is ordered to take immediate effect.

Approved January 9, 2009.

Filed with Secretary of State January 9, 2009.

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**[No. 438]**

**(HB 5555)**

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending sections 1, 1a, 4g, 4k, 4bb, 12, 18, and 21 (MCL 205.51, 205.51a, 205.54g, 205.54k, 205.54bb, 205.62, 205.68, and 205.71), sections 1, 4g, and 4k as amended and sections 12, 18, and 21 as added by 2004 PA 173, section 1a as amended by 2006 PA 434, and section 4bb as added by 2004 PA 301; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**205.51 Definitions; unlicensed person as agent of dealer, distributor, supervisor, or employer; regarding dealer, distributor, supervisor, or employer as making sales at retail prices.**

Sec. 1. (1) As used in this act:

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

(b) “Sale at retail” or “retail sale” means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) “Gross proceeds” means sales price.

(d) “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax. Sales price includes the following subparagraphs (i) through (vii) and excludes subparagraphs (viii) through (x):

(i) Seller’s cost of the property sold.

(ii) Cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller other than taxes imposed by this act, and any other expense of the seller.

(iii) Charges by the seller for any services necessary to complete the sale, other than the following:

(A) An amount received or billed by the taxpayer for remittance to the employee as a gratuity or tip, if the gratuity or tip is separately identified and itemized on the guest check or billed to the customer.

(B) Labor or service charges involved in maintenance and repair work on tangible personal property of others if separately itemized.

(iv) Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser. A seller is not liable under this act for delivery charges allocated to the delivery of exempt property.

(v) Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.

(vi) Credit for any trade-in.

(vii) Except as otherwise provided in subparagraph (x), consideration received by the seller from third parties if all of the following conditions are met:

(A) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale.

(B) The seller has an obligation to pass the price reduction or discount through to the purchaser.

(C) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser.

(D) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented.

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in a group or organization.

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(viii) Interest, financing, or carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(ix) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(x) Beginning January 1, 2000, employee discounts that are reimbursed by a third party on sales of motor vehicles.

(e) “Business” includes an activity engaged in by a person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect.

(f) “Tax year” or “taxable year” means the fiscal year of the state or the taxpayer’s fiscal year if permission is obtained by the taxpayer from the department to use the taxpayer’s fiscal year as the tax period instead.

(g) “Department” means the department of treasury.

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

(i) “Tax” includes a tax, interest, or penalty levied under this act.

(j) “Textiles” means goods that are made of or incorporate woven or nonwoven fabric, including, but not limited to, clothing, shoes, hats, gloves, handkerchiefs, curtains, towels, sheets, pillows, pillow cases, tablecloths, napkins, aprons, linens, floor mops, floor mats, and thread. Textiles also include materials used to repair or construct textiles, or other goods used in the rental, sale, or cleaning of textiles.

(2) If the department determines that it is necessary for the efficient administration of this act to regard an unlicensed person, including a salesperson, representative, peddler, or canvasser as the agent of the dealer, distributor, supervisor, or employer under whom the unlicensed person operates or from whom the unlicensed person obtains the tangible personal property sold by the unlicensed person, irrespective of whether the unlicensed person is making sales on the unlicensed person’s own behalf or on behalf of the dealer, distributor, supervisor, or employer, the department may so regard the unlicensed person and may regard the dealer, distributor, supervisor, or employer as making sales at retail at the retail price for the purposes of this act.

### **205.51a Additional definitions.**

Sec. 1a. As used in this act:

(a) “Alcoholic beverage” means a beverage suitable for human consumption that contains 1/2 of 1% or more of alcohol by volume.

(b) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(c) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(d) “Delivered electronically” means delivered from the seller to the purchaser by means other than tangible storage media.

(e) “Delivery charges” means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services. Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing. Beginning September 1, 2004, delivery charges do not include the charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. If a shipment includes both exempt property and taxable property, the seller shall allocate the delivery charge using 1 of the following methods:

(i) Multiply the delivery price by a fraction, the numerator of which is the total sales prices of the taxable property and the denominator of which is the total sales prices of all property in the shipment.

(ii) Multiply the delivery price by a fraction, the numerator of which is the total weight of the taxable property and the denominator of which is the total weight of all property in the shipment.

(f) “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that is all of the following:

(i) Required to be labeled as a dietary supplement identifiable by the “supplemental facts” box found on the label as required by 21 CFR 101.36.

(ii) Contains 1 or more of the following dietary ingredients:

(A) A vitamin.

(B) A mineral.

(C) An herb or other botanical.

(D) An amino acid.

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient listed in sub-subparagraphs (A) through (E).

(iii) Intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in 1 of those forms, is not represented as conventional food or for use as a sole item of a meal or of the diet.

(g) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients, including tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material, but not including multiple items of printed material delivered to a single address.

(h) “Drug” means a compound, substance, or preparation, or any component of a compound, substance, or preparation, other than food or food ingredients, dietary supplements, or alcoholic beverages, intended for human use that is 1 or more of the following:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or in any of their supplements.

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(iii) Intended to affect the structure or any function of the body.

(i) “Durable medical equipment” means equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including durable medical equipment repair or replacement parts, that does all of the following:

(i) Can withstand repeated use.

(ii) Is primarily and customarily used to serve a medical purpose.

(iii) Is not useful generally to a person in the absence of illness or injury.

(iv) Is not worn in or on the body.

(j) “Durable medical equipment repair or replacement parts” includes all components or attachments used in conjunction with durable medical equipment.

(k) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options

to purchase or extend. This definition applies only to leases and rentals entered into after September 1, 2004 and has no retroactive impact on leases and rentals that existed on that date. Lease or rental does not include the following subparagraphs (i) through (iii) and includes subparagraph (iv):

(i) A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(ii) A transfer of possession or control of tangible personal property under an agreement requiring transfer of title upon completion of the required payments and payment of an option price that does not exceed \$100.00 or 1% of the total required payments, whichever is greater.

(iii) The provision of tangible personal property along with an operator for a fixed or indeterminate period of time, where that operator is necessary for the equipment to perform as designed. To be necessary, an operator must do more than maintain, inspect, or set up the tangible personal property.

(iv) An agreement covering motor vehicles or trailers if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in section 7701(h)(1) of the internal revenue code, 26 USC 7701.

(m) “Mobility enhancing equipment” means equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is all of the following:

(i) Primarily and customarily used to provide or increase the ability to move from 1 place to another and is appropriate for use at home or on a motor vehicle.

(ii) Not generally used by a person with normal mobility.

(n) “Prescription” means an order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501. For a hearing aid, prescription includes an order, instruction, or direction of a hearing aid dealer or salesperson licensed under article 13 of the occupational code, 1980 PA 299, MCL 339.1301 to 339.1309.

(o) “Prewritten computer software” means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Prewritten computer software includes the following:

(i) Any combination of 2 or more prewritten computer software programs or portions of prewritten computer software programs.

(ii) Computer software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than that specific purchaser.

(iii) The modification or enhancement of prewritten computer software or portions of prewritten computer software where the modification or enhancement is designed and developed to the specifications of a specific purchaser unless there is a reasonable, separately stated charge or an invoice or other statement of the price is given to the purchaser for the modification or enhancement. If a person other than the original author or creator modifies or enhances prewritten computer software, that person is considered to be the author or creator of only that person’s modifications or enhancements.

(p) “Prosthetic device” means a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis, dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do 1 or more of the following:

- (i) Artificially replace a missing portion of the body.
- (ii) Prevent or correct a physical deformity or malfunction of the body.
- (iii) Support a weak or deformed portion of the body.

(q) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software.

(r) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

### **205.54g Sales exempt from tax; tax on sale of food or drink from vending machine; definitions.**

Sec. 4g. (1) The following are exempt from the tax under this act:

(a) Sales of drugs for human use that can only be legally dispensed by prescription or food or food ingredients, except prepared food intended for immediate human consumption.

(b) The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers.

(c) Food or tangible personal property purchased under the federal food stamp program or meals sold by a person exempt from the tax under this act that are eligible to be purchased under the federal food stamp program.

(d) Fruit or vegetable seeds and fruit or vegetable plants if purchased at a place of business authorized to accept food stamps by the food and nutrition service of the United States department of agriculture or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of denial to the department of treasury.

(e) Live animals purchased with the intent to be slaughtered for human consumption.

(2) Food or drink heated or cooled mechanically, electrically, or by other artificial means to an average temperature above 75 degrees Fahrenheit or below 65 degrees Fahrenheit before sale and sold from a vending machine, except milk, nonalcoholic beverages in a sealed container, and fresh fruit, is subject to the tax under this act. The tax due under this act on the sale of food or drink from a vending machine selling both taxable items and items exempt under this subsection shall be calculated under this act based on 1 of the following as determined by the taxpayer:

(a) Actual gross proceeds from sales at retail.

(b) Forty-five percent of proceeds from the sale of items subject to tax under this act or exempt from the tax levied under this act, other than from the sale of carbonated beverages.

(3) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients do not include alcoholic beverages and tobacco.

(4) “Prepared food” means the following:

(a) Food sold in a heated state or that is heated by the seller.

(b) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(c) Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food.

(5) Prepared food does not include the following:

(a) Food that is only cut, repackaged, or pasteurized by the seller.

(b) Raw eggs, fish, meat, poultry, and foods containing those raw items requiring cooking by the consumer in recommendations contained in section 3-401.11 of part 3-4 of chapter 3 of the 2001 food code published by the food and drug administration of the public health service of the department of health and human services, to prevent foodborne illness.

(c) Food sold in an unheated state by weight or volume as a single item, without eating utensils.

(d) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas, sold without eating utensils.

(6) “Prepared food intended for immediate consumption” means prepared food.

#### **205.54k Drop shipment; definition.**

Sec. 4k. (1) The sale of tangible personal property that is part of a drop shipment is exempt from the tax under this act if the taxpayer complies with the requirements of subsection (3).

(2) As used in this section, “drop shipment” means the direct delivery of tangible personal property to a purchaser in Michigan by a person who has sold the property to another person not licensed under this act but possessing a resale or exemption certificate, other written evidence of exemption authorized by another state, or any other acceptable information evidencing qualification for a resale exemption, for resale to the Michigan purchaser.

(3) For each transaction for which an exemption is claimed under subsection (1), the taxpayer shall provide, but not more frequently than annually, any information required by the board under the streamlined sales and use tax agreement in addition to the following information in a form prescribed by the department to the department:

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

(4) A sale at retail includes a drop shipment.

#### **205.54bb Sale of eligible automobile to qualified recipient; exemption; definitions.**

Sec. 4bb. (1) Beginning January 1, 2005, the sale of an eligible automobile to a qualified recipient by a qualified organization that is subject to the tax under this act is exempt.

(2) As used in this section:

(a) “Eligible automobile” means an automobile that meets all of the following requirements:

(i) The automobile has been inspected by a mechanic certified under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(ii) The automobile is insured as required under state law.

(iii) The automobile is registered to a qualified recipient.



(b) “Qualified organization” means an organization that applies for certification not later than July 1 of the year in which an exemption is claimed under this section and is certified by the department of treasury as meeting all of the following requirements:

(i) The organization is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(ii) The organization is licensed under the charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(iii) The organization administers a program to provide a qualified recipient with an eligible automobile for transportation to his or her place of employment or for employment-related activities.

(c) “Qualified recipient” means a person certified by a qualified organization as meeting all of the following qualifications:

(i) The qualified recipient receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(ii) The qualified recipient has a valid Michigan operator’s or chauffeur’s license.

(iii) The qualified recipient is financially capable of meeting any loan payment, insurance payment, or other expenditure associated with the eligible vehicle.

(iv) Public transportation is not reasonably available to the qualified recipient, the qualified recipient has no other reliable means by which to commute to his or her place of employment, and the qualified recipient will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.

(v) The qualified recipient has a demonstrated ability to maintain employment.

(vi) If the qualified recipient is currently employed for not less than an average of 20 hours per week, the qualified recipient requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

(vii) If the qualified recipient is not currently employed or is employed for less than an average of 20 hours per week, the qualified recipient requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

**205.62 Information to be obtained from purchaser; format; signature; record of exempt transactions; liability; proof that transaction not subject to tax or obtaining exemption form from purchaser; date; additional time for compliance; blanket exemption form; “certified service provider” defined.**

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

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

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

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

(5) A seller who complies with the requirements of this section is not liable for the tax if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller fraudulently fails to collect the tax, solicits a purchaser to make an improper claim for exemption, or accepts an exemption form when the purchaser claims an entity-based exemption if both of the following circumstances occur:

(a) The subject of the transaction sought to be covered by the exemption form is actually received by the purchaser at a location operated by the seller.

(b) The state in which that location operated by the seller is located provides an exemption form that clearly and affirmatively indicates that the claimed exemption is not available in that state.

(6) A seller who obtains a fully completed exemption form or captures the relevant data elements as outlined in this section within 120 days after the date of sale is not liable for the tax.

(7) If the seller has not obtained an exemption form or all relevant data elements, the seller may either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption form from the purchaser, by the later of the following:

(a) 120 days after a request by the department.

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

(d) In the instance of a credit audit, the issuance of an audit determination letter or informal conference decision and order of determination.

(e) The date of a final order of the court of claims or the Michigan tax tribunal, as applicable, with respect to an assessment, order, or decision of the department.

(8) The department may, in its discretion, allow a seller additional time to comply with subsection (7).

(9) A seller is not liable for the tax if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

(10) A certified service provider shall be considered a seller under this section. As used in this section, "certified service provider" means that term as defined in section 25 of the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.825.

**205.68 Annual inventory and purchase records; retention; tax liability; failure to file return or maintain records; tax assessment; burden of proof on taxpayer; exemption claim; blanket exemption claim.**

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