CHAPTER 445. TRADE AND COMMERCE

CARRYING ON BUSINESS UNDER ASSUMED OR FICTITIOUS NAME
Act 101 of 1907

AN ACT to regulate the carrying on of business under an assumed or fictitious name.

History: 1907, Act 101, Eff. Sept. 28, 1907.

The People of the State of Michigan enact:

445.1 Certificate required to carry on business under assumed name; filing; form; contents; fee; execution and acknowledgment; exceptions; certification and return of duplicate; "person" and "address" defined; imposition of fee by certain charter counties.

Sec. 1. (1) A person shall not carry on, conduct, or transact business in this state under an assumed name, or under a designation, name, or style other than the real name of the person owning, conducting, or transacting that business, unless the person files in duplicate in the office of the clerk of the county or counties in which the person owns, conducts, or transacts, or intends to own, conduct, or transact, business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which the business owned is, or is to be, conducted or transacted, and the true or real full name and address of the person owning, conducting, or transacting the business. At the time of filing the certificate, the person shall pay the clerk a filing fee of $6.00. The certificate shall be executed and duly acknowledged by the person owning, conducting, or intending to conduct the business.

(2) The selling of goods by sample or through a traveling agent or traveling salesperson, or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this act as conducting or transacting business so as to require the filing of the certificates.

(3) The county clerk shall certify the duplicate and return it to the applicant.

(4) As used in this act:

(a) "Person" means 1 or more individuals, partnerships, trusts, fiduciaries, or other entities capable of contracting, except corporations and limited partnerships.

(b) "Address" means the residence or principal business address of the person.

(5) A charter county with a population of more than 2,000,000 may impose by ordinance a different amount for the filing fee prescribed by subsection (1). A charter county shall not impose a fee which is greater than the cost of the service for which the fee is charged.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6349;—CL 1929, 9825;—Am. 1931, Act 274, Eff. Sept. 18, 1931;—CL 1948, 445.1;—Am. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1967, Act 138, Eff. Nov. 2, 1967;—Am. 1968, Act 165, Eff. Nov. 15, 1968 ;—Am. 1969, Act 158, Imd. Eff. Aug. 5, 1969;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977;—Am. 1984, Act 294, Imd. Eff. Dec. 20, 1984;—Am. 1990, Act 111, Eff. Mar. 28, 1991.

445.1a Certificate; use of assumed name authorized for 5 years; renewal certificate; filing, form, fee, and duration; notice; abandonment of assumed name; destruction of certificate.

Sec. 1a. The certificate when acknowledged and filed as required in section 1 shall authorize use of the assumed name for 5 years. If before the expiration date a renewal certificate, on forms to be provided by the county clerk, is filed with the clerk and a fee of $4.00 paid, the renewal certificate shall extend the right to use the assumed name for an additional 5-year period from the date of expiration of the original certificate, or renewal if it has previously been renewed. Between the sixtieth and thirtieth day before the expiration date of an outstanding certificate, the county clerk shall mail to the person or persons whose certificate will expire renewal certificate blank forms, in duplicate, together with a notice, on form to be provided by the clerk, that the certificate authorizing ..... and ..... to conduct business under the assumed name of ..... expires at 5 p.m. on the ..... day of ....., and that failure to file a renewal certificate and pay a fee of $4.00 before the expiration date shall on that date constitute abandonment of the assumed name. The notice required in this act shall be mailed by the county clerk to the last address of the person or persons whose certificate will expire, as stated on the original or renewal certificate. Six years after an original or renewal certificate has expired, the county clerk may destroy the certificate.

History: Add. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977.

445.1b Repealed. 1968, Act 165, Eff. Nov. 15, 1968.

Compiler's note: The repealed section pertained to carrying on business under assumed name; additional certificate.

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445.2 Assumed name certificates; filing period; rejection by county clerk.

Sec. 2. Persons now owning or conducting such business under an assumed name, or under such designation referred to in section 1, shall file such certificate or renewal certificate as hereinbefore prescribed, within 90 days after this act shall take effect and after 30 days' notice from the county clerk, and persons hereafter owning, conducting or transacting business as aforesaid shall, before commencing said business file such certificate in the manner hereinbefore prescribed. The several county clerks of this state are hereby authorized to reject any assumed name which is likely to mislead the public, or any assumed name already filed in the county or so nearly similar thereto as to lead to confusion or deception.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6350;—CL 1929, 9826;—Am. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2a Assumed name; change of business location certificate, filing.

Sec. 2-a. Whenever an assumed name concern has changed or changes its place of business, it shall be the duty of the person or persons conducting such business to file with the county clerk, with whom the certificate or renewal certificate required under the provisions of section 1 or 1a of this act was filed, a certificate stating the change in business location, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act, and, in case the business location is changed to some other county or counties in this state, to file the assumed name certificate or renewal certificate required under the provisions of section 1 or 1a of this act, with the clerk of such county, before doing any business in such county.

History: Add. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2a;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2b Assumed name; discontinuance of operation certificate, filing.

Sec. 2-b. Whenever an assumed name concern shall go out of business, it shall be the duty of the person or persons, who have conducted such business, to file a certificate with the clerk of the county or counties in which such concern transacted business, of the discontinuance of the operation of the business in such county or counties, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act.

History: Add. 1931, Act 272, Eff. Sept. 18, 1931;—CL 1948, 445.2b;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

445.2c Certified copies of original or renewal certificates; request ; fee.

Sec. 2c. Upon request and payment of $2.00 per copy, the clerk shall supply certified copies of the original or renewal certificates.

History: Add. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977;—Am. 1990, Act 111, Eff. Mar. 28, 1991.

445.3 Certificates; alphabetical index; indexing and filing fee; certified copy as evidence; cost of certified copies; certificate as evidence of partnership; service of process; extension of time; jurisdiction.

Sec. 3. (1) The county clerk shall keep an alphabetical index of all persons filing certificates, provided for in this act, and for the indexing and filing of the certificates, shall receive a fee of $10.00. A copy of the certificate duly certified to by the county clerk in whose office the same is filed, shall be presumptive evidence in all courts of law in this state of the facts contained in the certificate. Upon the payment of the $10.00, the payer shall be entitled to 2 certified copies of the certificate without extra charge, with additional copies at $1.00 each at the time of filing the original certificate.

(2) If 2 or more persons file a certificate to carry on a business under an assumed name, the certificate shall be prima facie evidence of a contract of partnership.

(3) Every person who is a nonresident of this state, upon filing a certificate provided for in this act, shall file an irrevocable consent that actions may be commenced against the person in the courts of this state, by service of process or pleading authorized by the laws of this state on the county clerk in whose office the certificate and consent are filed. For the filing of the consent, the county clerk shall receive a fee of $2.00.

(4) The county clerk shall keep a record of each process and the date and hour of service. Notice of service and a copy of the summons shall immediately either be served upon the defendant personally by the sheriff or constable of the county in which the defendant resides or sent by certified mail by the plaintiff or the plaintiff's attorney to the defendant. If personal service of the notice and copy of summons is had upon the defendant, the officer making the service shall so state in the affidavit of service which shall be filed with the court having jurisdiction of the cause, or if service be made by certified mail, then the plaintiff or the plaintiff's attorney shall make an affidavit showing that service of the notice and summons has been made

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upon the defendant by certified mail and the affiant shall attach to the affidavit a true copy of the summons and notice served and the return receipt of the defendant and shall file the affidavit and attached papers with the court having jurisdiction of the cause. The court in which the action is pending may order an extension of time necessary to afford the defendant reasonable opportunity to defend the action.

(5) The circuit court of the county in the office of the county clerk of which the certificate is filed shall have jurisdiction of an action brought against the nonresident person, but this provision shall not be construed as depriving any other court of jurisdiction.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6351;—CL 1929, 9827;—Am. 1939, Act 104, Eff. Sept. 29, 1939;—Am. 1947, Act 255, Eff. Oct. 11, 1947;—CL 1948, 445.3;—Am. 1949, Act 151, Eff. Sept. 23, 1949;—Am. 1963, Act 29, Eff. Sept. 6, 1963;—Am. 1977, Act 121, Imd. Eff. Oct. 19, 1977.

445.4 Contents of certificate; applicability of act to corporation or limited partnership.

Sec. 4. The certificate referred to in section 1, in the case of any person named in the certificate other than an individual, shall state the nature of the entity; the statutory law, if any, under which it was organized; the place and the date of filing with any governmental authority, identifying it, of any documents, describing them, required to be filed in order to accomplish or complete the organization of the entity and to entitle it to operate or transact business under the laws of this state and, if organized elsewhere, of the state or country where organized; and, if a fiduciary, the date of the last will and testament or trust agreement and the court, place, and date of admission to probate of the will or the names and addresses of the parties to the trust agreement, and the name and address of each fiduciary; and, if a partnership, the name and address of each general partner. This act shall in no way affect or apply to any corporation or limited partnership organized under the laws of this state, or to any corporation or limited partnership organized under the laws of any other state and lawfully doing business in the state, except as otherwise provided by the professional service corporation act, Act No. 192 of the Public Acts of 1962, as amended, being sections 450.221 to 450.235 of the Michigan Compiled Laws.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6352;—CL 1929, 9828;—CL 1948, 445.4;—Am. 1967, Act 138, Eff. Nov. 2, 1967;—Am. 1968, Act 165, Eff. Nov. 15, 1968;—Am. 1990, Act 111, Eff. Mar. 28, 1991.

445.5 Violation of act; penalty; violation of contracts, effect.

Sec. 5. Any person or persons owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25.00 nor more than $100.00 or by imprisonment in the county jail for a term not exceeding 30 days or by both such fine and imprisonment in the discretion of the court, and each day any person or persons shall violate any provisions of this act shall be deemed a separate offense: Provided, however, The fact that a penalty is provided herein for non-compliance with the provisions of this act shall not be construed to avoid contracts; but any person or persons failing to file the certificate required by section 1 or 1a shall be prohibited from bringing any suit, action or proceeding in any of the courts of this state, in relation to any contract or other matter made or done by such person or persons under an assumed or fictitious name, until after full compliance with the provisions of this act; but no person or persons doing business under a fictitious name or as the assignee or assignees thereof shall maintain or prosecute any action, nor shall any order, judgment, or decree be made in any action heretofore or hereafter commenced in any court of this state upon or on account of any contract or contracts made or transactions had under such fictitious name after August 14, 1919, if the conduct of such business under such fictitious name has ceased, or if it is still conducted under such fictitious name, then until after full compliance with the provisions of this act.

History: 1907, Act 101, Eff. Sept. 28, 1907;—CL 1915, 6353;—Am. 1919, Act 263, Eff. Aug. 14, 1919;—CL 1929, 9829;—Am. 1931, Act 274, Eff. Sept. 18, 1931;—CL 1948, 445.5;—Am. 1949, Act 151, Eff. Sept. 23, 1949.

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BUSINESS COORDINATION PROCEDURES ACT
Act 141 of 1982

AN ACT to create an office of business permits within the department of commerce to provide comprehensive information on permits required for business undertakings within this state; to prescribe the powers and duties of the office, the executive director, the department of commerce, and certain state agencies with respect thereto; and to make an appropriation.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

The People of the State of Michigan enact:

***** *445.11 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24* *****

445.11 Short title.

Sec. 1. This act shall be known and may be cited as the "business coordination procedures act".

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

***** *445.12 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24* *****

445.12 Meanings of words and phrases.

Sec. 2. The words and phrases defined in sections 3 and 4 have the meanings ascribed to them in those sections.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

***** *445.13 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24* *****

445.13 Definitions; A to E.

Sec. 3. (1) "Applicant" means any person attempting to secure a permit.

(2) "Department" means the department of commerce.

(3) "Executive director" means the chief administrator of the office.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

***** *445.14 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24* *****

445.14 Definitions; O to S.

Sec. 4. (1) "Office" means the office of business permits created in section 5.

(2) "Permit" means any state agency permit, license, certificate, approval, registration, or similar form of permission required by law or state agency rule for the formation and operation of a sole proprietorship, partnership, or corporation. Permit includes a permit issued pursuant to the public health code, Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws. Permit does not include the issuance of any occupational license required for the practicing of a trade or a profession that pertains to a business undertaking.

(3) "Person" means a sole proprietorship, partnership, association, corporation, or other organization required to obtain 1 or more permits.

(4) "State agency" means any agency, department, board, bureau, commission, division, office, or council of the state, or a public corporation or authority at least 1 of whose members is appointed by the governor.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

***** *445.15 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24* *****

445.15 Office of business permits; creation; department representatives; duties of office.

Sec. 5. (1) The office of business permits is created within the department. A representative from each state department, appointed by the director of that department, shall serve as a liaison between his or her department and the office and shall assist the executive director in implementing this act.

(2) Under the supervision of the department, the office shall do all of the following:

(a) Provide comprehensive information on permits required for business undertakings in the state and make this information available to applicants and generally to any person.

(b) Develop and utilize a computer system to enable the office to store, modify, retrieve, and exchange permit information for purposes of efficiently assisting an applicant.

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(c) Develop and implement a master application procedure as described in section 7 to expedite the identification and processing of permits.

(d) When appropriate, arrange preapplication conferences to clarify the interest and requirements of state agencies with respect to permit applications and to provide for a conceptual review of business undertakings at an early stage of planning in order that interested persons may have an official opinion as to the general acceptability of their planned undertakings.

(e) Assist an applicant in the resolution of any outstanding issue identified by a state agency in the processing of an application.

(f) Upon request of an applicant, assist an applicant whose application has been rejected to understand the steps that need to be taken in order for the application to be approved.

(g) Encourage federal and local government participation in permit coordination.

(h) Make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business undertakings.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.16 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.16 Report of state agency required to review, approve, or grant permits; information file on state agency permits; list of permits; availability and contents; preparation and distribution of information explaining permit requirements affecting businesses; report of new or modified permit; effective date; recommendations.

Sec. 6. (1) Not later than 90 days after the effective date of this act, each state agency required to review, approve, or grant permits shall report to the office, in a form prescribed by the office, on each type of such review, approval, and permit administered by the state agency. The report of each state agency shall include specific application forms, any applicable rules, and the time period necessary for permit application consideration, based upon experience and statutory requirement.

(2) The office shall prepare an information file on state agency permits and permit requirements upon receipt of the information required by subsection (1).

(3) Not later than 180 days after the effective date of this act, the office shall make available to the public at the offices of the department and through distribution to appropriate local governmental offices a list of all permits issued by each state agency. The list shall include, but not be limited to, the name of the permit, the division of the state department that issues the permit, the cost of the original and renewal fees of the permit, the frequency of renewal, and whether a physical or record inspection is required before approval of the permit application. The office also shall prepare and distribute information explaining permit requirements affecting businesses, including requirements having multiple permit or multiple state agency aspects.

(4) Each state agency required to review, approve, or grant permits shall provide the office with a report of any new permit or modification of any existing permit, together with applicable forms, rules, and information required by subsection (1). A new or modified permit shall not become effective until 20 working days after the office has received the report. However, the 20-working day period may be dispensed with for any new or modified permit adopted as an emergency rule pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(5) The office shall make recommendations as to the modification of permits or permit requirements to the affected state agency.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.17 THIS SECTION IS NOT APPLICABLE AFTER APRIL 17, 1987: See 445.24 ******

445.17 Master application procedure.

Sec. 7. (1) Within 180 days after the effective date of this act, the office shall develop and implement a master application procedure to expedite the identification and processing of permits. A master application shall be made on a form prescribed by the office and shall include the nature of the project, the location of the project, and any other information which the department by rule requires.

(2) The use of a master application shall be at the option of a person planning to start a business. Upon request of a person, the office shall assist the person in preparing the master application, describe the procedures involved, and provide other information that may be helpful or necessary.

(3) Upon receipt of a master application, the office immediately shall notify in writing each state agency having a possible interest in the application with respect to permits which are or may be required. The notification shall be accompanied by a copy of the master application, together with the date by which the

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state agency shall respond.

(4) Each notified state agency shall respond in writing to the office not later than the specified date described in subsection (3), not exceeding 15 working days after receipt of the notice. The notified state agency shall advise the office as to the number of permits under its jurisdiction that are or may be required for the business undertaking described in the master application. The response shall include a copy of each applicable permit that the applicant needs to complete and information concerning any fees charged by the state agency issuing the permit.

(5) After receipt of 1 or more permits and other applicable information from the notified state agencies, the office shall provide the applicant with the state agency application forms and other related information and shall advise the applicant that each enclosed application form is to be completed and forwarded to the appropriate state agency, or, at the option of the applicant, the office will receive and forward the forms as a package, together with the necessary fees, to the appropriate state agencies.

(6) An applicant may withdraw a master application at any time without forfeiture of any permit approval applied for or obtained under the master application procedures described in this section.

(7) After the applicant completes the necessary state agency permit application forms and submits the necessary fees and additional information required by the state agency, the permit issuing process follows existing procedures of the state agency. The office may act in an advisory capacity in aiding the applicant with state agency permit requirements, but this act does not infringe upon the state agency's jurisdiction or authority concerning the issuance of permits.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.18 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.18 Preapplication conference.

Sec. 8. Upon request of a person and if the executive director considers it advisable, the office may conduct a preapplication conference at which affected state agencies shall participate in order to clarify the nature and scope of their interest, to provide guidance to the person in relation to permit application requirements and review processes, to point out obstacles the person may have in obtaining the necessary permits or in establishing a profit-making business, and to coordinate state agency actions with regard to the business undertaking. Other state agencies having responsibilities for business promotion and regulation may participate in this conference at the discretion of the executive director. The executive director or his or her designee shall organize, attend, and supervise a preapplication conference.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.19 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.19 Rejection of permit application; classification and explanation.

Sec. 9. To the extent possible, the office, upon the request of an applicant who has had 1 or more permit applications rejected by a state agency, shall clarify to the applicant the reasons for the rejection of the permit application and shall explain the steps that the applicant needs to take in order for approval of his or her permit application to be granted.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.20 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.20 Services available without cost.

Sec. 10. Services rendered by the office shall be made available without cost to the applicant.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.21 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.21 Annual appropriation.

Sec. 11. The legislature annually shall appropriate a sum sufficient to implement this act.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.22 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.22 Annual report.

Sec. 12. The executive director annually shall report to the governor and the legislature on the effectiveness of the office in assisting applicants in obtaining permits, including the number of master

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applications the office had processed during the year and the number of applicants whose necessary permit applications all were approved.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.23 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.23 Rules.

Sec. 13. The department shall promulgate rules to implement this act pursuant to the administrative procedures act, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

****** 445.24 THIS SECTION IS NOT APPLICABLE AFTER APRIL 27, 1987: See 445.24 ******

445.24 Applicability of act.

Sec. 14. This act shall not apply 5 years after the effective date of this act.

History: 1982, Act 141, Imd. Eff. Apr. 27, 1982.

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COOPERATIVE IDENTITY PROTECTION ACT
Act 310 of 1984

AN ACT to prohibit the use of the terms cooperative, co-op, or any variation thereof under certain circumstances; to provide for the powers and duties of the attorney general; and to provide for certain remedies, damages, and penalties.

History: 1984, Act 310, Eff. Jan. 1, 1985.

The People of the State of Michigan enact:

445.51 Short title.

Sec. 1. This act shall be known and may be cited as the "cooperative identity protection act".

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.52 Definitions.

Sec. 2. As used in this act:

(a) "Consumer protection act" means the Michigan consumer protection act, Act No. 331 of the Public Acts of 1976, being sections 445.901 to 445.922 of the Michigan Compiled Laws.

(b) "Person" means an individual, partnership, cooperation, association, trust, or other legal entity.

(c) "Trade or commerce" means trade or commerce as defined in section 2 of the consumer protection act.

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.53 Use of terms "cooperative,""co-op," or variation thereof.

Sec. 3. Unfair, unconscionable, or deceptive methods, acts or practices with respect to the use of the terms cooperative, co-op, or any variation thereof in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Using the terms "cooperative", "co-op", or any variation thereof in one's name when not authorized to make use of those terms by section 1123 of Act No. 162 of the Public Acts of 1982, being section 450.3123 of the Michigan Compiled Laws, or by section 99 of Act No. 327 of the Public Acts of 1931, being section 450.99 of the Michigan Compiled Laws, or representing oneself to be, or causing oneself to be represented as being, a cooperative when one is not a person described in section 1123 of Act No. 162 of the Public Acts of 1982.

(b) In the case of a cooperative, representing or causing others to represent, in connection with offering goods, services, or facilities to consumers, that the cooperative makes membership available to consumers when the cooperative does not make membership available to consumers. Notwithstanding section 1123 of Act No. 162 of the Public Acts of 1982, being section 450.3123 of the Michigan Compiled Laws, use of the term "cooperative", "co-op", or any variation thereof in one's name in communications with consumers may be a violation of this section unless the use of those terms indicates the type of person to whom membership is available. This subdivision shall not prohibit the continued use of the terms "cooperative", "co-op", or any variation thereof by a corporation authorized to use those terms either by section 1123 of Act No. 162 of the Public Acts of 1982 or by section 99 of Act No. 327 of the Public Acts of 1931, if the corporation was in existence and used 1 or more of those terms in its name or to represent itself before the effective date of this act, but such use shall not continue after January 1, 1990.

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.54 Powers of enforcement.

Sec. 4. The attorney general shall have the following powers to enforce this act:

(a) To bring an action for a temporary or permanent injunction in the manner provided in section 5 of the consumer protection act.

(b) To accept an assurance of discontinuance in the manner provided in section 6 of the consumer protection act.

(c) To apply for the issuance of subpoenas in the manner provided in sections 7 and 8 of the consumer protection act.

(d) To bring a class action in the manner provided in section 10 of the consumer protection act.

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.55 Action for declaratory judgment or injunction; action for damages and attorneys' fees.

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Sec. 5. (1) Whether or not the person seeks damages or has an adequate remedy at law, a person may bring an action to do either of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under section 3.

(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice which is unlawful under section 3.

(2) A person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.56 Effective date.

Sec. 6. This act shall take effect January 1, 1985.

History: 1984, Act 310, Eff. Jan. 1, 1985.

445.57 Conditional effective date.

Sec. 7. This act shall not take effect unless House Bill No. 4335 of the 82nd Legislature is enacted into law.

History: 1984, Act 310, Eff. Jan. 1, 1985.

Compiler's note: House Bill No. 4335, referred to in Sec. 7, was filed with the Secretary of State on July 9, 1984, and became P.A. 1984, No. 209, Eff. Nov. 1, 1985.

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SOCIAL SECURITY NUMBER PRIVACY ACT
Act 454 of 2004

AN ACT to establish the social security number privacy act in the state of Michigan; to prescribe penalties; and to provide remedies.

History: 2004, Act 454, Eff. Mar. 1, 2005.

The People of the State of Michigan enact:

445.81 Short title.

Sec. 1. This act shall be known and may be cited as the "social security number privacy act".

History: 2004, Act 454, Eff. Mar. 1, 2005.

445.82 Definitions.

Sec. 2. As used in this act:

(a) "Child or spousal support" means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

(*i*) Expenses for day-to-day care.

(*ii*) Medical, dental, or other health care.

(*iii*) Child care expenses.

(*iv*) Educational expenses.

(*v*) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vi*) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vii*) A surcharge paid under section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(b) "Computer", "computer network", or "computer system" mean those terms as defined in section 2 of 1979 PA 53, MCL 752.792.

(c) "Internet" means that term as defined in 47 U.S.C. 230.

(d) "Mailed" means delivered by United States mail or other delivery service that does not require the signature of recipient indicating actual receipt.

(e) "Person" means an individual, partnership, limited liability company, association, corporation, public or nonpublic elementary or secondary school, trade school, vocational school, community or junior college, college, university, state or local governmental agency or department, or other legal entity.

(d) "Publicly display" means to exhibit, hold up, post, or make visible or set out for open view, including, but not limited to, open view on a computer device, computer network, website, or other electronic medium or device, to members of the public or in a public manner. The term does not include conduct described in section 3(1)(b), (c), or (f).

(e) "Title IV-D agency" means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(f) "Vital record" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(g) "Website" means a collection of pages of the world wide web or internet, usually in HTML format, with clickable or hypertext links to enable navigation from 1 page or section to another, that often uses associated graphics files to provide illustration and may contain other clickable or hypertext links.

History: 2004, Act 454, Eff. Mar. 1, 2005.

Compiler's note: In subdivision (b), the phrase "mean those terms" evidently should read "means those terms."

Following the first occurrence of subdivision (e), subdivision (d) should evidently be designated subdivision (f), subdivision (e) should evidently be designated subdivison (g), subdivison (f) should evidently be designated (h), and subdivison (g) should evidently be designated (i).

445.83 Prohibited use of social security number of employee, student, or other individual; exceptions.

Sec. 3. (1) Except as provided in subsection (2), a person shall not intentionally do any of the following with the social security number of an employee, student, or other individual:

(a) Publicly display all or more than 4 sequential digits of the social security number.

(b) Subject to subsection (3), use all or more than 4 sequential digits of the social security number as the primary account number for an individual. However, if the person is using the social security number under

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subdivision (c) and as the primary account number on the effective date of this act, this subdivision does not apply to that person until January 1, 2006.

(c) Visibly print all or more than 4 sequential digits of the social security number on any identification badge or card, membership card, or permit or license. However, if a person has implemented or implements a plan or schedule that establishes a specific date by which it will comply with this subdivision, this subdivision does not apply to that person until January 1, 2006, or the completion date specified in that plan or schedule, whichever is earlier.

(d) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number over the internet or a computer system or network unless the connection is secure or the transmission is encrypted.

(e) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number to gain access to an internet website or a computer system or network unless the connection is secure, the transmission is encrypted, or a password or other unique personal identification number or other authentication device is also required to gain access to the internet website or computer system or network.

(f) Include all or more than 4 sequential digits of the social security number in or on any document or information mailed or otherwise sent to an individual if it is visible on or, without manipulation, from outside of the envelope or packaging.

(g) Subject to subsection (3), beginning January 1, 2006, include all or more than 4 sequential digits of the social security number in any document or information mailed to a person, unless any of the following apply:

(*i*) State or federal law, rule, regulation, or court order or rule authorizes, permits, or requires that a social security number appear in the document.

(*ii*) The document is sent as part of an application or enrollment process initiated by the individual.

(*iii*) The document is sent to establish, confirm the status of, service, amend, or terminate an account, contract, policy, or employee or health insurance benefit or to confirm the accuracy of a social security number of an individual who has an account, contract, policy, or employee or health insurance benefit.

(*iv*) The document or information is mailed by a public body under any of the following circumstances:

(A) The document or information is a public record and is mailed in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(B) The document or information is a copy of a public record filed or recorded with a county clerk or register of deeds office and is mailed by that office to a person entitled to receive that record.

(C) The document or information is a copy of a vital record recorded as provided by law and is mailed to a person entitled to receive that record.

(*v*) The document or information is mailed by or at the request of an individual whose social security number appears in the document or information or his or her parent or legal guardian.

(*vi*) The document or information is mailed in a manner or for a purpose consistent with subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809; with the health insurance portability and accountability act of 1996, Public Law 104-191; or with section 537 or 539 of the insurance code of 1956, 1956 PA 218, MCL 500.537 and 500.539.

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

(a) A use of all or more than 4 sequential digits of a social security number that is authorized or required by state or federal statute, rule, or regulation, by court order or rule, or pursuant to legal discovery or process.

(b) A use of all or more than 4 sequential digits of a social security number by a title IV-D agency, law enforcement agency, court, or prosecutor as part of a criminal investigation or prosecution, or providing all or more than 4 sequential digits of a social security number to a title IV-D agency, law enforcement agency, court, or prosecutor as part of a criminal investigation or prosecution.

(3) It is not a violation of subsection (1)(b) or (g) to use all or more than 4 sequential digits of a social security number if the use is any of the following:

(a) An administrative use of all or more than 4 sequential digits of the social security number in the ordinary course of business, by a person or a vendor or contractor of a person, to do any of the following:

(*i*) Verify an individual's identity, identify an individual, or do another similar administrative purpose related to an account, transaction, product, service, or employment or proposed account, transaction, product, service, or employment.

(*ii*) Investigate an individual's claim, credit, criminal, or driving history.

(*iii*) Detect, prevent, or deter identity theft or another crime.

(*iv*) Lawfully pursue or enforce a person's legal rights, including, but not limited to, an audit, collection, investigation, or transfer of a tax, employee benefit, debt, claim, receivable, or account or an interest in a receivable or account.

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(*v*) Lawfully investigate, collect, or enforce a child or spousal support obligation or tax liability.

(*vi*) Provide or administer employee or health insurance or membership benefits, claims, or retirement programs or to administer the ownership of shares of stock or other investments.

(b) A use of all or more than 4 sequential digits of a social security number as a primary account number that meets both of the following:

(*i*) The use began before the effective date of this act.

(*ii*) The use is ongoing, continuous, and in the ordinary course of business. If the use is stopped for any reason, this subdivision no longer applies.

History: 2004, Act 454, Eff. Mar. 1, 2005.

445.84 Privacy policy.

Sec. 4. (1) Beginning January 1, 2006, a person who obtains 1 or more social security numbers in the ordinary course of business shall create a privacy policy that does at least all of the following concerning the social security numbers the person possesses or obtains:

(a) Ensures to the extent practicable the confidentiality of the social security numbers.

(b) Prohibits unlawful disclosure of the social security numbers.

(c) Limits who has access to information or documents that contain the social security numbers.

(d) Describes how to properly dispose of documents that contain the social security numbers.

(e) Establishes penalties for violation of the privacy policy.

(2) A person that creates a privacy policy under subsection (1) shall publish the privacy policy in an employee handbook, in a procedures manual, or in 1 or more similar documents, which may be made available electronically.

(3) This section does not apply to a person who possesses social security numbers in the ordinary course of business and in compliance with the fair credit reporting act, 15 USC 1681 to 1681v, or subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

History: 2004, Act 454, Eff. Mar. 1, 2005.

445.85 Exemption from disclosure.

Sec. 5. All or more than 4 sequential digits of a social security number contained in a public record are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243.

History: 2004, Act 454, Eff. Mar. 1, 2005.

445.86 Violation of MCL 445.83 as misdemeanor; penalty; recovery of damages in civil action.

Sec. 6. (1) A person who violates section 3 with knowledge that the person's conduct violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(2) An individual may bring a civil action against a person who violates section 3 and may recover actual damages. If the person knowingly violates section 3, an individual may recover actual damages or $1,000.00, whichever is greater. If the person knowingly violates section 3, an individual may also recover reasonable attorney fees. Except for good cause, not later than 60 days before filing a civil action, an individual must make a written demand to the person for a violation of section 3 for the amount of his or her actual damages with reasonable documentation of the violation and the actual damages caused by the violation. This subsection does not apply to a person for conduct by an employee or agent of the person in violation of a privacy policy created pursuant to section 4 or in compliance with the fair credit reporting act, 15 USC 1681 to 1681v, or subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809, if the person has taken reasonable measures to enforce its policy and to correct and prevent the reoccurrence of any known violations.

History: 2004, Act 454, Eff. Mar. 1, 2005.

445.87 Effective date.

Sec. 7. This act takes effect March 1, 2005.

History: 2004, Act 454, Eff. Mar. 1, 2005.

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IDENTITY THEFT PROTECTION ACT
Act 452 of 2004

AN ACT to prohibit certain acts and practices concerning identity theft; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts. AN ACT to prohibit certain acts and practices concerning identity theft; to require notification of a security breach of a database that contains certain personal information; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 2004, Act 452, Eff. Mar. 1, 2005;—Am. 2006, Act 566, Eff. July 2, 2007.

The People of the State of Michigan enact:

445.61 Short title.

Sec. 1. This act shall be known and may be cited as the "identity theft protection act".

History: 2004, Act 452, Eff. Mar. 1, 2005.

***** *445.63 THIS SECTION IS AMENDED EFFECTIVE JULY 2, 2007: See 445.63.amended* *****

445.63 Definitions.

Sec. 3. As used in this act:

(a) "Child or spousal support" means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

(*i*) Expenses for day-to-day care.

(*ii*) Medical, dental, or other health care.

(*iii*) Child care expenses.

(*iv*) Educational expenses.

(*v*) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vi*) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vii*) A surcharge as provided by section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(b) "Credit card" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(c) "Depository institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

(d) "Financial institution" means a depository institution, an affiliate of a depository institution, a licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or a person subject to subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

(e) "Financial transaction device" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(f) "Identity theft" means engaging in an act or conduct prohibited in section 5(1).

(g) "Law enforcement agency" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(h) "Local registrar" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(i) "Medical records or information" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(j) "Person" means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(k) "Personal identifying information" means a name, number, or other information that is used for the

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purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

(*l*) "State registrar" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(m) "Trade or commerce" means that term as defined in section 2 of the Michigan consumer protection act, 1971 PA 331, MCL 445.902.

(n) "Vital record" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

History: 2004, Act 452, Eff. Mar. 1, 2005.

****** 445.63.amended THIS AMENDED SECTION IS EFFECTIVE JULY 2, 2007 ******

445.63.amended Definitions.

Sec. 3. As used in this act:

(a) "Agency" means a department, board, commission, office, agency, authority, or other unit of state government of this state. The term includes an institution of higher education of this state. The term does not include a circuit, probate, district, or municipal court.

(b) "Breach of the security of a database" or "security breach" means the unauthorized access and acquisition of data that compromises the security or confidentiality of personal information maintained by a person or agency as part of a database of personal information regarding multiple individuals. These terms do not include unauthorized access to data by an employee or other individual if the access meets all of the following:

(*i*) The employee or other individual acted in good faith in accessing the data.

(*ii*) The access was related to the activities of the agency or person.

(*iii*) The employee or other individual did not misuse any personal information or disclose any personal information to an unauthorized person.

(c) "Child or spousal support" means support for a child or spouse, paid or provided pursuant to state or federal law under a court order or judgment. Support includes, but is not limited to, any of the following:

(*i*) Expenses for day-to-day care.

(*ii*) Medical, dental, or other health care.

(*iii*) Child care expenses.

(*iv*) Educational expenses.

(*v*) Expenses in connection with pregnancy or confinement under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vi*) Repayment of genetic testing expenses, under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(*vii*) A surcharge as provided by section 3a of the support and parenting time enforcement act, 1982 PA 295, MCL 552.603a.

(d) "Credit card" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(e) "Data" means computerized personal information.

(f) "Depository institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union.

(g) "Encrypted" means transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, or securing information by another method that renders the data elements unreadable or unusable.

(h) "Financial institution" means a depository institution, an affiliate of a depository institution, a licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431, or the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or a person subject to

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subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

(i) "Financial transaction device" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(j) "Identity theft" means engaging in an act or conduct prohibited in section 5(1).

(k) "Law enforcement agency" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(*l*) "Local registrar" means that term as defined in section 2804 of the public health code, 1978 PA 368, MCL 333.2804.

(m) "Medical records or information" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(n) "Person" means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(o) "Personal identifying information" means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

(p) "Personal information" means the first name or first initial and last name linked to 1 or more of the following data elements of a resident of this state:

(*i*) Social security number.

(*ii*) Driver license number or state personal identification card number.

(*iii*) Demand deposit or other financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to any of the resident's financial accounts.

(q) "Public utility" means that term as defined in section 1 of 1972 PA 299, MCL 460.111.

(r) "Redact" means to alter or truncate data so that no more than 4 sequential digits of a driver license number, state personal identification card number, or account number, or no more than 5 sequential digits of a social security number, are accessible as part of personal information.

(s) "State registrar" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

(t) "Trade or commerce" means that term as defined in section 2 of the Michigan consumer protection act, 1971 PA 331, MCL 445.902.

(u) "Vital record" means that term as defined in section 2805 of the public health code, 1978 PA 368, MCL 333.2805.

History: 2004, Act 452, Eff. Mar. 1, 2005;—Am. 2006, Act 566, Eff. July 2, 2007.

445.65 Prohibited acts; violations; defense in civil action or criminal prosecution; burden of proof.

Sec. 5. (1) A person shall not do any of the following:

(a) With intent to defraud or violate the law, use or attempt to use the personal identifying information of another person to do either of the following:

(*i*) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.

(*ii*) Commit another unlawful act.

(b) By concealing, withholding, or misrepresenting the person's identity, use or attempt to use the personal identifying information of another person to do either of the following:

(*i*) Obtain credit, goods, services, money, property, a vital record, a confidential telephone record, medical records or information, or employment.

(*ii*) Commit another unlawful act.

(2) A person who violates subsection (1)(b)(*i*) may assert 1 or more of the following as a defense in a civil action or as an affirmative defense in a criminal prosecution, and has the burden of proof on that defense by a preponderance of the evidence:

(a) That the person gave a bona fide gift for or for the benefit or control of, or use or consumption by, the person whose personal identifying information was used.

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(b) That the person acted in otherwise lawful pursuit or enforcement of a person's legal rights, including an investigation of a crime or an audit, collection, investigation, or transfer of a debt, child or spousal support obligation, tax liability, claim, receivable, account, or interest in a receivable or account.

(c) That the action taken was authorized or required by state or federal law, rule, regulation, or court order or rule.

(d) That the person acted with the consent of the person whose personal identifying information was used, unless the person giving consent knows that the information will be used to commit an unlawful act.

History: 2004, Act 452, Eff. Mar. 1, 2005;—Am. 2006, Act 246, Imd. Eff. June 30, 2006.

445.65a Definitions; prohibited acts; obtaining confidential telephone records by law enforcement agency or telecommunication provider.

Sec. 5a. (1) As used in this act:

(a) "Confidential telephone record" means any of the following:

(*i*) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a service offered by a telecommunication provider subscribed to by any customer of that telecommunication provider.

(*ii*) Information that is made available to a telecommunication provider by a customer solely by virtue of the relationship between the telecommunication provider and the customer.

(*iii*) Information contained in any bill related to the product or service offered by a telecommunication provider and received by any customer of the telecommunication provider.

(b) "Covered specialized mobile radio service" means a commercial mobile radio service that offers real-time, 2-way switched voice or data service and is interconnected with the public switched network utilizing an in-network switching facility.

(c) "IP-enabled voice service" means an interconnected voice over internet protocol service that enables real-time, 2-way voice communications, requires a broadband connection from the user's location using internet protocol-compatible equipment, and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(d) "Telecommunication provider" means all of the following:

(*i*) A provider as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(*ii*) A provider of IP-enabled voice service.

(*iii*) A provider of any telecommunication service.

(e) "Telecommunication service" means all of the following:

(*i*) A service as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(*ii*) Cellular telephone service.

(*iii*) Broadband personal communication service.

(*iv*) Covered specialized mobile radio.

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

(a) Knowingly procure, attempt to procure, or solicit or conspire with another to procure a confidential telephone record of any resident of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means.

(b) Knowingly sell or attempt to sell a confidential telephone record of any resident of this state without the authorization of the customer to whom the record pertains.

(c) Receive a confidential telephone record of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means.

(3) This section does not prohibit any action by a law enforcement agency, or any officer, employee, or agent of such agency, from obtaining confidential telephone records in connection with the performance of the official duties of the agency.

(4) This section does not prohibit a telecommunication provider from obtaining, using, disclosing, or permitting access to any confidential telephone record, either directly or indirectly, through its agents, subcontractors, affiliates, or representatives in the normal course of business. This section does not expand the obligations and duties of a telecommunication provider to protect confidential telephone records beyond those obligations and duties otherwise established by federal and state law.

History: Add. 2006, Act 246, Imd. Eff. June 30, 2006.

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445.67 Additional prohibited acts.

Sec. 7. A person shall not do any of the following:

(a) Obtain or possess, or attempt to obtain or possess, personal identifying information of another person with the intent to use that information to commit identity theft or another crime.

(b) Sell or transfer, or attempt to sell or transfer, personal identifying information of another person if the person knows or has reason to know that the specific intended recipient will use, attempt to use, or further transfer the information to another person for the purpose of committing identity theft or another crime.

(c) Falsify a police report of identity theft, or knowingly create, possess, or use a false police report of identity theft.

History: 2004, Act 452, Eff. Mar. 1, 2005.

445.69 Certain violations as felony; penalty; consecutive sentences; defense in civil action or criminal prosecution; burden of proof; exception.

Sec. 9. (1) Subject to subsection (6), a person who violates section 5 or 7 is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $25,000.00, or both.

(2) Sections 5 and 7 apply whether an individual who is a victim or intended victim of a violation of 1 of those sections is alive or deceased at the time of the violation.

(3) This section does not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(4) The court may order that a term of imprisonment imposed under this section be served consecutively to any term of imprisonment imposed for a conviction of any other violation of law committed by that person using the information obtained in violation of this section or any other violation of law committed by that person while violating or attempting to violate this section.

(5) A person may assert as a defense in a civil action or as an affirmative defense in a criminal prosecution for a violation of section 5 or 7, and has the burden of proof on that defense by a preponderance of the evidence, that the person lawfully transferred, obtained, or attempted to obtain personal identifying information of another person for the purpose of detecting, preventing, or deterring identity theft or another crime or the funding of a criminal activity.

(6) Subsection (1) does not apply to a violation of a statute or rule administered by a regulatory board, commission, or officer acting under authority of this state or the United States that confers primary jurisdiction on that regulatory board, commission, or officer to authorize, prohibit, or regulate the transactions and conduct of that person, including, but not limited to, a state or federal statute or rule governing a financial institution and the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, if the act is committed by a person subject to and regulated by that statute or rule, or by another person who has contracted with that person to use personal identifying information.

History: 2004, Act 452, Eff. Mar. 1, 2005.

445.71 Prohibited acts in conduct of trade or commerce; violation as misdemeanor.

Sec. 11. (1) A person shall not do any of the following in the conduct of trade or commerce:

(a) Deny credit or public utility service to or reduce the credit limit of a consumer solely because the consumer was a victim of identity theft, if the person had prior knowledge that the consumer was a victim of identity theft. A consumer is presumed to be a victim of identity theft for the purposes of this subdivision if he or she provides both of the following to the person:

(*i*) A copy of a police report evidencing the claim of the victim of identity theft.

(*ii*) Either a properly completed copy of a standardized affidavit of identity theft developed and made available by the federal trade commission pursuant to 15 USC 1681g or an affidavit of fact that is acceptable to the person for that purpose.

(b) Solicit to extend credit to a consumer who does not have an existing line of credit, or has not had or applied for a line of credit within the preceding year, through the use of an unsolicited check that includes personal identifying information other than the recipient's name, address, and a partial, encoded, or truncated personal identifying number. In addition to any other penalty or remedy under this act or the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for the amount of the instrument if the instrument is used by an unauthorized user and for any fees assessed to the consumer if the instrument is dishonored.

(c) Solicit to extend credit to a consumer who does not have a current credit card, or has not had or applied for a credit card within the preceding year, through the use of an unsolicited credit card sent to the consumer.

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In addition to any other penalty or remedy under this act or the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, a credit card issuer, financial institution, or other lender that violates this subdivision, and not the consumer, is liable for any charges if the credit card is used by an unauthorized user and for any interest or finance charges assessed to the consumer.

(d) Extend credit to a consumer without exercising reasonable procedures to verify the identity of that consumer. Compliance with regulations issued for depository institutions, and to be issued for other financial institutions, by the United States department of treasury under section 326 of the USA patriot act of 2001, 31 USC 5318, is considered compliance with this subdivision. This subdivision does not apply to a purchase of a credit obligation in an acquisition, merger, purchase of assets, or assumption of liabilities or any change to or review of an existing credit account.

(2) A person who knowingly or intentionally violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than $1,000.00, or both. This subsection does not affect the availability of any civil remedy for a violation of this act, the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, or any other state or federal law.

History: 2004, Act 452, Eff. Mar. 1, 2005.

****** 445.72.added THIS ADDED SECTION IS EFFECTIVE JULY 2, 2007 ******

445.72.added Notice of security breach; requirements.

Sec. 12. (1) Unless the person or agency determines that the security breach has not or is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state, a person or agency that owns or licenses data that are included in a database that discovers a security breach, or receives notice of a security breach under subsection (2), shall provide a notice of the security breach to each resident of this state who meets 1 or more of the following:

(a) That resident's unencrypted and unredacted personal information was accessed and acquired by an unauthorized person.

(b) That resident's personal information was accessed and acquired in encrypted form by a person with unauthorized access to the encryption key.

(2) Unless the person or agency determines that the security breach has not or is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state, a person or agency that maintains a database that includes data that the person or agency does not own or license that discovers a breach of the security of the database shall provide a notice to the owner or licensor of the information of the security breach.

(3) In determining whether a security breach is not likely to cause substantial loss or injury to, or result in identity theft with respect to, 1 or more residents of this state under subsection (1) or (2), a person or agency shall act with the care an ordinarily prudent person or agency in like position would exercise under similar circumstances.

(4) A person or agency shall provide any notice required under this section without unreasonable delay. A person or agency may delay providing notice without violating this subsection if either of the following is met:

(a) A delay is necessary in order for the person or agency to take any measures necessary to determine the scope of the security breach and restore the reasonable integrity of the database. However, the agency or person shall provide the notice required under this subsection without unreasonable delay after the person or agency completes the measures necessary to determine the scope of the security breach and restore the reasonable integrity of the database.

(b) A law enforcement agency determines and advises the agency or person that providing a notice will impede a criminal or civil investigation or jeopardize homeland or national security. However, the agency or person shall provide the notice required under this section without unreasonable delay after the law enforcement agency determines that providing the notice will no longer impede the investigation or jeopardize homeland or national security.

(5) Except as provided in subsection (11), an agency or person shall provide any notice required under this section by providing 1 or more of the following to the recipient:

(a) Written notice sent to the recipient at the recipient's postal address in the records of the agency or person.

(b) Written notice sent electronically to the recipient if any of the following are met:

(*i*) The recipient has expressly consented to receive electronic notice.

(*ii*) The person or agency has an existing business relationship with the recipient that includes periodic electronic mail communications and based on those communications the person or agency reasonably believes

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that it has the recipient's current electronic mail address.

(*iii*) The person or agency conducts its business primarily through internet account transactions or on the internet.

(c) If not otherwise prohibited by state or federal law, notice given by telephone by an individual who represents the person or agency if all of the following are met:

(*i*) The notice is not given in whole or in part by use of a recorded message.

(*ii*) The recipient has expressly consented to receive notice by telephone, or if the recipient has not expressly consented to receive notice by telephone, the person or agency also provides notice under subdivision (a) or (b) if the notice by telephone does not result in a live conversation between the individual representing the person or agency and the recipient within 3 business days after the initial attempt to provide telephonic notice.

(d) Substitute notice, if the person or agency demonstrates that the cost of providing notice under subdivision (a), (b), or (c) will exceed $250,000.00 or that the person or agency has to provide notice to more than 500,000 residents of this state. A person or agency provides substitute notice under this subdivision by doing all of the following:

(*i*) If the person or agency has electronic mail addresses for any of the residents of this state who are entitled to receive the notice, providing electronic notice to those residents.

(*ii*) If the person or agency maintains a website, conspicuously posting the notice on that website.

(*iii*) Notifying major statewide media. A notification under this subparagraph shall include a telephone number or a website address that a person may use to obtain additional assistance and information.

(6) A notice under this section shall meet all of the following:

(a) For a notice provided under subsection (5)(a) or (b), be written in a clear and conspicuous manner and contain the content required under subdivisions (c) to (g).

(b) For a notice provided under subsection (5)(c), clearly communicate the content required under subdivisions (c) to (g) to the recipient of the telephone call.

(c) Describe the security breach in general terms.

(d) Describe the type of personal information that is the subject of the unauthorized access or use.

(e) If applicable, generally describe what the agency or person providing the notice has done to protect data from further security breaches.

(f) Include a telephone number where a notice recipient may obtain assistance or additional information.

(g) Remind notice recipients of the need to remain vigilant for incidents of fraud and identity theft.

(7) A person or agency may provide any notice required under this section pursuant to an agreement between that person or agency and another person or agency, if the notice provided pursuant to the agreement does not conflict with any provision of this section.

(8) Except as provided in this subsection, after a person or agency provides a notice under this section, the person or agency shall notify each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in 15 USC 1681a(p), of the security breach without unreasonable delay. A notification under this subsection shall include the number of notices that the person or agency provided to residents of this state and the timing of those notices. This subsection does not apply if either of the following is met:

(a) The person or agency is required under this section to provide notice of a security breach to 1,000 or fewer residents of this state.

(b) The person or agency is subject to title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809.

(9) A financial institution that is subject to, and has notification procedures in place that are subject to examination by the financial institution's appropriate regulator for compliance with, the interagency guidance on response programs for unauthorized access to customer information and customer notice prescribed by the board of governors of the federal reserve system and the other federal bank and thrift regulatory agencies, or similar guidance prescribed and adopted by the national credit union administration, and its affiliates, is considered to be in compliance with this section.

(10) A person or agency that is subject to and complies with the health insurance portability and accountability act of 1996, Public Law 104-191, and with regulations promulgated under that act, 45 CFR parts 160 and 164, for the prevention of unauthorized access to customer information and customer notice is considered to be in compliance with this section.

(11) A public utility that sends monthly billing or account statements to the postal address of its customers may provide notice of a security breach to its customers in the manner described in subsection (5), or alternatively by providing all of the following:

(a) As applicable, notice as described in subsection (5)(b).

(b) Notification to the media reasonably calculated to inform the customers of the public utility of the

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security breach.

(c) Conspicuous posting of the notice of the security breach on the website of the public utility.

(d) Written notice sent in conjunction with the monthly billing or account statement to the customer at the customer's postal address in the records of the public utility.

(12) A person that provides notice of a security breach in the manner described in this section when a security breach has not occurred, with the intent to defraud, is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than $250.00 for each violation, or both.

(13) Subject to subsection (14), a person that knowingly fails to provide any notice of a security breach required under this section may be ordered to pay a civil fine of not more than $250.00 for each failure to provide notice. The attorney general or a prosecuting attorney may bring an action to recover a civil fine under this section.

(14) The aggregate liability of a person for civil fines under subsection (13) for multiple violations of subsection (13) that arise from the same security breach shall not exceed $750,000.00.

(15) Subsections (12) and (13) do not affect the availability of any civil remedy for a violation of state or federal law.

(16) This section applies to the discovery or notification of a breach of the security of a database that occurs on or after the effective date of the amendatory act that added this section.

(17) This section does not apply to the access or acquisition by a person or agency of federal, state, or local government records or documents lawfully made available to the general public.

(18) This section deals with subject matter that is of statewide concern, and any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to regulate, directly or indirectly, any matter expressly set forth in this section is preempted.

History: Add. 2006, Act 566, Eff. July 2, 2007.

****** 445.72a.added THIS ADDED SECTION IS EFFECTIVE JULY 2, 2007 ******

445.72a.added Destruction of data containing personal information required; violation as misdemeanor; fine; compliance; "destroy" defined.

Sec. 12a. (1) Subject to subsection (3), a person or agency that maintains a database that includes personal information regarding multiple individuals shall destroy any data that contain personal information concerning an individual when that data is removed from the database and the person or agency is not retaining the data elsewhere for another purpose not prohibited by state or federal law. This subsection does not prohibit a person or agency from retaining data that contain personal information for purposes of an investigation, audit, or internal review.

(2) A person who knowingly violates this section is guilty of a misdemeanor punishable by a fine of not more than $250.00 for each violation. This subsection does not affect the availability of any civil remedy for a violation of state or federal law.

(3) A person or agency is considered to be in compliance with this section if the person or agency is subject to federal law concerning the disposal of records containing personal identifying information and the person or agency is in compliance with that federal law.

(4) As used in this section, "destroy" means to destroy or arrange for the destruction of data by shredding, erasing, or otherwise modifying the data so that they cannot be read, deciphered, or reconstructed through generally available means.

History: Add. 2006, Act 566, Eff. July 2, 2007.

****** 445.72b.added THIS ADDED SECTION IS EFFECTIVE JULY 2, 2007 ******

445.72b.added Misrepresentation by advertisement or solicitation prohibited; violation as misdemeanor; penalty.

Sec. 12b. (1) A person shall not distribute an advertisement or make any other solicitation that misrepresents to the recipient that a security breach has occurred that may affect the recipient.

(2) A person shall not distribute an advertisement or make any other solicitation that is substantially similar to a notice required under section 12(5) or by federal law, if the form of that notice is prescribed by state or federal law, rule, or regulation.

(3) A person who knowingly or intentionally violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than $1,000.00 for each violation, or both. This subsection does not affect the availability of any civil remedy for a violation of this section or any other state or federal law.

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History: Add. 2006, Act 566, Eff. July 2, 2007.

445.73 Verification of information; use of vital record.

Sec. 13. (1) A law enforcement agency or victim of identity theft may verify information from a vital record from a local registrar or the state registrar in the manner described in section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881.

(2) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for a law enforcement agency investigating identity theft may provide that law enforcement agency with all of the following information about any previous requests concerning that public record that is available to the registrar:

(a) Whether or not a certified copy or copies of the record were requested.

(b) The date or dates a copy or copies of the record were issued.

(c) The name of each applicant who requested the record.

(d) The address, e-mail address, telephone number, and other identifying information of each applicant who requested the record.

(e) Payment information regarding each request.

(3) A state registrar or local registrar that verifies information from a vital record under section 2881(2) of the public health code, 1978 PA 368, MCL 333.2881, for an individual who provides proof that he or she is a victim of identity theft may provide that individual with all of the following information about any previous requests concerning that public record that is available to the registrar:

(a) Whether or not a certified copy or copies of the record were requested.

(b) The date or dates a copy or copies of the record were issued.

(4) For purposes of subsection (3), it is sufficient proof that an individual is a victim of identity theft for a state registrar or local registrar to provide the information described in that subsection if he or she provides the registrar with a copy of a police report evidencing the claim that he or she is a victim of identity theft; and, if available, an affidavit of identity theft, in a form developed by the state registrar in cooperation with the attorney general for purposes of this subsection.

(5) A law enforcement agency may request an administrative use copy of a vital record from the state registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891.

(6) A law enforcement agency may request an administrative use copy of a vital record from a local registrar in the manner described in section 2891 of the public health code, 1978 PA 368, MCL 333.2891, if the request for the administrative use copy is in writing and contains both of the following:

(a) A statement that the law enforcement agency requires information from a vital record beyond the information the local registrar may verify under subsections (1) and (2).

(b) The agreement of the law enforcement agency that it will maintain the administrative use copy of the vital record in a secure location and will destroy the copy by confidential means when it no longer needs the copy.

History: 2004, Act 452, Eff. Mar. 1, 2005.

445.75 Repeal of MCL 750.285.

Sec. 15. Section 285 of the Michigan penal code, 1931 PA 328, MCL 750.285, is repealed.

History: 2004, Act 452, Eff. Mar. 1, 2005.

445.77 Effective date.

Sec. 17. This act takes effect March 1, 2005.

History: 2004, Act 452, Eff. Mar. 1, 2005.

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UNLAWFUL TRADE PRACTICES
Act 271 of 1941

AN ACT to define certain unlawful trade practices connected with the sale or other transfer; or with the purchase for another of goods, wares or merchandise; to provide certain penalties for the commission of such unlawful trade practices; and to provide for enjoining the commission of such trade practices and permitting the rescission of certain contracts.

History: 1941, Act 271, Eff. Jan. 10, 1942;—Am. 1956, Act 214, Eff. Aug. 11, 1956;—Am. 1962, Act 115, Eff. Mar. 28, 1963.

The People of the State of Michigan enact:

445.101 Unlawful trade practices; suppression.

Sec. 1. The legislature of the state of Michigan hereby finds: improper and misleading uses of the words "wholesale,""employee" and similar terms or phrases in connection with certain sales; and likewise improper and misleading uses of the words "manufacturer,""broker,""wholesaler," and similar terms or phrases denoting that the seller of a product is something other than a retailer thereof; and likewise the other practices hereinafter prohibited, are harmful to the welfare of the people of this state in the following ways, among others: consumers are misled into believing they are buying goods at a substantial discount from regular retail prices, when in fact they are not; trade is diverted from established retail outlets offering various customer services (such as free deliveries, exchange privileges, and credit facilities) to establishments not offering equal services but selling at substantially the same price, to the detriment of the consumer, who is deprived of the benefit of such services without receiving compensating advantages; purchases by business concerns, at discounts from current retail market prices, of goods, wares, and merchandise purchased not for business use but for the personal use of individuals, divert trade unfairly from established retail outlets, resulting in a loss of sales tax revenues and in a trend to higher retail prices. The legislature, acting in the exercise of the police power of the state, declares that the public policy of the state requires, and that the general welfare of the people of the state will be benefited by, the suppression of the trade practices hereinafter defined.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.101.

445.102 Unlawful trade practices; definitions.

Sec. 2. When used in this act:

(a) The term "person" includes any individual, firm, co-partnership, joint adventure, association, municipal or private corporation whether organized for profit or not, company, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.102.

445.103 Unlawful trade practices; wholesale, use of term.

Sec. 3. It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to advertise, claim, or imply that any sale or other transfer of goods, wares, or merchandise is a sale or transfer at wholesale unless such sale or transfer is made to a transferee for resale and unless such sale or transfer is not subject to the provisions of the sales tax law, being Act No. 167 of the Public Acts of 1933, as amended or hereafter amended.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.103.

445.104 Unlawful trade practices; employee, use of term.

Sec. 4. It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to use the word "employee" or any derivative thereof or synonym therefor, in connection with signs, advertising, notices, or other written or printed matter in any way referring to sales or other transfers of goods, wares, or merchandise, if such sales or transfers are made or offered to or for others than bona fide employees of such seller or transferor.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.104.

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445.105 Unlawful trade practices; manufacturer, miller, wholesaler and broker, use of terms.

Sec. 5. It shall be an unlawful trade practice for any person engaged in selling goods, wares, or merchandise to individual consumers, to incorporate in his business name or otherwise to use in describing his business, the words "manufacturer,""miller,""wholesaler,""broker," or any derivative or synonym for any of them, unless such person is in fact engaged in 1 or more of such businesses in addition to his business of selling goods, wares, or merchandise to individual consumers. In cases where a person is engaged in manufacturing, milling, wholesaling, or brokerage and is in addition engaged in making sales to individual consumers, it shall be an unlawful trade practice for such person to imply directly or indirectly in connection with sales to individual consumers that the selling price is other than a retail price unless the sale is for resale.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.105.

445.106 Unlawful trade practices; purchase of unrelated business items; automobile seat belts, exemption.

Sec. 6. It shall be an unlawful trade practice for any employer, directly or indirectly, by itself or through a subsidiary agency owned or controlled in part by such employer, to purchase any goods, wares or merchandise in the name of or on the credit of such employer, or at special discounts available to such employer, for any other purpose than for use or resale in the regular course of business of such employer; to sell, cause to be sold, or have under his or its control for sale to his or its employees or to any other person, any goods, wares or merchandise not offered for sale by such employer in the regular course of his or its business; to authorize or permit his or its name, credit or premises to be used in connection with the sale or offer for sale of any such merchandise and to authorize any of his or its officers, agents or employees, during working hours or on his or its premises, to perform any of the acts hereinabove in this section described. This section shall not apply to purchases by an employer for the purpose of use or resale to his or its employees of equipment, tools, candy, chewing gum, meals, tobacco or food services provided in the regular course of business; or to any goods, wares or merchandise which may be related to the business of the employer and which the employer so purchases for resale to his or its employees for the purpose of promoting a principal business of the employer, or for utilizing a principal product or service of the employer. It shall not apply to purchases by an employer for the purpose of resale to his or its employees of automobile safety seat belts for personal use by the employees.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.106;—Am. 1956, Act 214, Eff. Aug. 11, 1956;—Am. 1962, Act 115, Eff. Mar. 28, 1963.

445.106a Unlawful trade practices; sale at reduced price, false representation.

Sec. 6a. It shall be an unlawful trade practice for any person, in connection with an offer or exhibit of any goods, wares, or merchandise for sale at retail, or an exhibit of samples, catalogues or other forms of advertising listing goods, wares, or merchandise for retail sale, to display price tags or price quotations in any other form, which are substantially in excess of the prices at which such goods, wares, or merchandise are regularly or customarily sold at retail by such person or by the person issuing such samples, catalogues or other advertising, so as to imply falsely that the goods, wares or merchandise are offered for sale at a reduction from an indicated regular retail price.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.106a.

445.106b Unlawful trade practices; United States government, use of terms, exception.

Sec. 6b. It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any surplus materials as defined in the surplus property act of 1944 or any other goods, wares or merchandise under corporate or trade names which carry or which trade under or which in any way use in dealing with the public, directly or indirectly, any name which by reason of the inclusion of a word or words such as "army,""navy,""United States,""federal,""treasury,""procurement,""GI,""post exchange" or any others which connoting the United States government or its armed forces, or any of its departments or agencies, has a tendency to lead the purchasing public to believe that the establishment has some official relation to the United States government or that all of the articles sold or offered for sale are surplus materials: Provided, however, That this section shall not apply to any corporation all of the stock of which is owned by the United States.

History: Add. 1945, Act 108, Eff. Sept. 6, 1945;—CL 1948, 445.106b.

445.106c Unlawful trade practices; unclaimed freight.

Sec. 6c. It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any goods, wares or merchandise under corporate

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or trade names which carry or which trade under or which in any way use, in dealing with the public, directly or indirectly, any name which by reason of the inclusion of the words “unclaimed freight” has a tendency to lead the purchasing public to believe that the goods, wares or merchandise offered for sale are in fact unclaimed goods offered for sale by common carriers or authorized agents thereof: Provided, however, That this section shall not apply to any person if all goods, wares or merchandise sold or offered for sale are in fact unclaimed freight.

History: Add. 1945, Act 108, Eff. Sept. 6, 1945;—CL 1948, 445.106c.

445.107 Unlawful trade practices; circuit court injunction; compensatory costs; sales tax, collection.

Sec. 7. The circuit court of the county where any unlawful trade practice is committed shall have jurisdiction and power, on petition of any person, and on a showing that the commission of such unlawful trade practice has caused damage or threatens to cause damage to the petitioner or those represented by petitioner, to enjoin the commission of such unlawful trade practice or practices. Upon the granting of an injunction, the plaintiff or plaintiffs, in addition to regular taxable costs, shall be awarded compensatory costs, which shall include all sums reasonably expended to prepare and present the cause including all reasonable attorney fees incurred: Provided, however, That such compensatory costs may be denied if the trial judge rules that a meritorious, even though unsuccessful, defense was presented. The court may, in any case where such injunction is sought or issued, require and order the defendant or defendants in such proceeding to pay to the state board of tax administration any sum which the court finds should have been paid, but was not paid as a sales tax (pursuant to the provisions of Act No. 167 of the Public Acts of 1933, as amended or hereafter amended, being sections 205.51 to 205.78, inclusive, of the Compiled Laws of 1948) in connection with any sale or sales consummated in the course of the unlawful trade practice or practices complained of.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.107;—Am. 1956, Act 214, Eff. Aug. 11, 1956.

445.108 Unlawful trade practices; rescission.

Sec. 8. Any person to whom is sold any goods, wares or merchandise in the course of an unlawful trade practice at his option, on discovery of such unlawful trade practice and on due notice to the seller, may rescind the sale and recover back from the seller the price or any portion thereof theretofore paid by him to the seller. The right of rescission must be exercised within 8 months subsequent to the date of the sale complained of.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.108;—Am. 1962, Act 115, Eff. Mar. 28, 1963.

445.109 Unlawful trade practices; sale of product by employer to employee.

Sec. 9. Nothing in this act shall be deemed to prohibit the sale by an employer to his employees of his own products or property at any price.

History: 1941, Act 271, Eff. Jan. 10, 1942;—CL 1948, 445.109.

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HOME SOLICITATION SALES
Act 227 of 1971

AN ACT to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

The People of the State of Michigan enact:

445.111 Definitions.

Sec. 1. As used in this act:

(a) "Home solicitation sale" means a sale of goods or services of more than $25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:

(*i*) A sale made pursuant to a preexisting revolving charge account.

(*ii*) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(*iii*) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.

(*iv*) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.

(*v*) A sale made pursuant to a printed advertisement in a publication of general circulation.

(*vi*) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.

(*vii*) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

(b) "Fixed location" means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

(c) "Business day" means Monday through Friday and does not include Saturday, Sunday, or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(d) "Federally insured depository institution" means a state or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.

(e) As used in only the definition of home solicitation sales, "goods or services" does not include any of the following:

(*i*) A loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of a federally insured depository institution.

(*ii*) An extension of credit that is subject to any of the following acts:

(A) The mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.

(C) The regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

(D) The consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(E) 1984 PA 379, MCL 493.101 to 493.114.

(F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(*iii*) A sale of a security or interest in a security that is subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(f) "Written solicitation" means a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service.

(g) "ADAD" or "automatic dialing and announcing device" means any device or system of devices that is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers.

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(h) “Commission” means the public service commission.

(i) “Do-not-call list” means a do-not-call list of consumers and their residential telephone numbers maintained by the commission, by a vendor designated by the commission, or by an agency of the federal government, under section 1a.

(j) “Existing customer” means an individual who has purchased goods or services from a person, who is the recipient of a voice communication from that person, and who either paid for the goods or services within the 12 months preceding the voice communication or has not paid for the goods and services at the time of the voice communication because of a prior agreement between the person and the individual.

(k) “Person” means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(*l*) “Residential telephone subscriber” or “subscriber” means a person residing in this state who has residential telephone service.

(m) “Telephone solicitation” means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. Telephone solicitation does not include any of the following:

(*i*) A voice communication to a residential telephone subscriber with that subscriber's express invitation or permission prior to the voice communication.

(*ii*) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g).

(*iii*) A voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

(n) “Telephone solicitor” means any person doing business in this state who makes or causes to be made a telephone solicitation from within or outside of this state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.

(o) “Vendor” means a person designated by the commission to maintain a do-not-call list under section 1a. The term may include a governmental entity.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 1980, Act 108, Imd. Eff. May 10, 1980;—Am. 1998, Act 126, Imd. Eff. June 10, 1998;—Am. 1999, Act 18, Imd. Eff. Apr. 28, 1999;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

445.111a Telephonic solicitation using recorded message prohibited; establishment of state do-not-call list.

Sec. 1a. (1) A home solicitation sale shall not be made by telephonic solicitation using in whole or in part a recorded message. A person shall not make a telephone solicitation that consists in whole or in part of a recorded message.

(2) Within 120 days after the effective date of the amendatory act that added this subsection, the commission shall do 1 of the following:

(a) Establish a state do-not-call list. All of the following apply if the commission establishes a do-not-call list under this subdivision:

(*i*) The commission shall publish the do-not-call list quarterly for use by telephone solicitors.

(*ii*) The do-not-call list fund is created in the state treasury. Money received from fees under subparagraph (*iii*) shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to the commission to cover the costs of administering the do-not-call list, but may not be appropriated to compensate or reimburse a vendor designated under subdivision (b) to maintain a do-not-call list under that subdivision.

(*iii*) The commission shall establish and collect 1 or both of the following fees to cover the costs to the commission for administering the do-not-call list:

(A) Fees charged to telephone solicitors for access to the do-not-call list.

(B) Fees charged to residential telephone subscribers for inclusion on the do-not-call list. The commission shall not charge a residential telephone subscriber a fee of more than $5.00 for a 3-year period.

(*iv*) The commission shall maintain the do-not-call list for at least 1 year. After 1 year, the commission may at any time elect to designate a vendor to maintain a do-not-call list under subdivision (b), in which case subdivision (b) shall apply.

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(b) Designate a vendor to maintain a do-not-call list. All of the following apply to a vendor designated to maintain a do-not-call list under this subdivision:

(*i*) The commission shall establish a procedure or follow existing procedure for the submission of bids by vendors to maintain a do-not-call list under this subdivision.

(*ii*) The commission shall establish a procedure or follow existing procedure for the selection of the vendor to maintain the do-not-call list. In selecting the vendor, the commission shall consider at least all of the following factors:

(A) The cost of obtaining and the accessibility and frequency of publication of the do-not-call list to telephone solicitors.

(B) The cost and ease of registration on the do-not-call list to consumers who are seeking inclusion on the do-not-call list.

(*iii*) The commission may review its designation and make a different designation under this subdivision if the commission determines that another person would be better than the designated vendor in meeting the selection factors established under subparagraph (*ii*) or if the designated vendor engages in activities the commission considers contrary to the public interest.

(*iv*) If the commission does not establish a state do-not-call list under subdivision (a), the commission shall comply with the designation requirements of this subdivision for at least 1 year. After 1 year, the commission may at any time elect to establish and maintain a do-not-call list under subdivision (a), in which case subdivision (a) shall apply.

(*v*) Unless the vendor is a governmental entity, a vendor designated by the commission under this subdivision is not a governmental agency and is not an agent of the commission in maintaining a do-not-call list.

(*vi*) The commission and a vendor designated under this subdivision shall execute a written contract. The contract shall include the vendor's agreement to the requirements of this section and any additional requirements established by the commission.

(*vii*) The commission shall not use state funds to compensate or reimburse a vendor designated under this subdivision. The vendor may receive compensation or reimbursement for maintaining a designated do-not-call list under this subdivision only from 1 or both of the following:

(A) Fees charged by the vendor to telephone solicitors for access to the do-not-call list.

(B) Fees charged by the vendor to residential telephone subscribers for inclusion on the do-not-call list. A designated vendor shall not charge a residential telephone subscriber a fee of more than $5.00 for a 3-year period.

(*viii*) The designee do-not-call list fund is created in the state treasury. If the vendor is a department or agency of this state, money received from fees under subparagraph (*vii*) by that vendor shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to that vendor to cover the costs of administering the do-not-call list.

(3) In determining whether to establish a state do-not-call list under subsection (2)(a) or designate a vendor under subsection (2)(b), and in designating a vendor under subsection (2)(b), the commission shall consider comments submitted to the commission from consumers, telephone solicitors, or any other person.

(4) Beginning 90 days after the commission establishes a do-not-call list under subsection (2)(a) or designates a vendor to maintain a do-not-call list under subsection (2)(b), a telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of that do-not-call list.

(5) Notwithstanding any other provision of this section, if an agency of the federal government establishes a federal do-not-call list, within 120 days after the establishment of the federal do-not-call list, the commission shall designate the federal list as the state do-not-call list. The federal list shall remain the state do-not-call list as long as the federal list is maintained. A telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal list.

(6) A telephone solicitor shall not use a do-not-call list for any purpose other than meeting the requirements of subsection (4) or (5).

(7) The commission or a vendor shall not sell or transfer the do-not-call list to any person for any purpose unrelated to this section.

History: Add. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

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445.111b Information to be provided by person making telephone solicitation; interference with caller ID function prohibited.

Sec. 1b. (1) At the beginning of a telephone solicitation, a person making a telephone solicitation to a residential telephone subscriber shall state his or her name and the full name of the organization or other person on whose behalf the call was initiated and provide a telephone number of the organization or other person on request. A natural person must be available to answer the telephone number at any time when telephone solicitations are being made.

(2) The person answering the telephone number required under subsection (1) shall provide a residential telephone subscriber calling the telephone number with information describing the organization or other person on whose behalf the telephone solicitation was made to the residential telephone subscriber and describing the telephone solicitation.

(3) A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.111c Unfair or deceptive act or practice; violation; penalty; damages.

Sec. 1c. (1) It is an unfair or deceptive act or practice and a violation of this act for a telephone solicitor to do any of the following:

(a) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, all of the following information:

(*i*) Total purchase price to the consumer of the goods or services to be received.

(*ii*) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of an offer to sell goods or services.

(*iii*) Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to cancel a home solicitation sale under section 2 and, if applicable, that the seller does not have a refund, cancellation, or exchange policy.

(*iv*) Any material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the "no purchase required" method of entering the contest.

(*v*) Any material aspect of an investment opportunity the seller is offering, including, but not limited to, risk, liquidity, earnings potential, market value, and profitability.

(*vi*) The quantity and any material aspect of the quality or basic characteristics of any goods or services offered.

(*vii*) The right to cancel a sale under this act, if any.

(b) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.

(c) Make a false or misleading statement with the purpose of inducing a consumer to pay for goods or services.

(d) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization. As used in this subdivision, "verifiable authorization" means a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.

(e) Offer to a consumer in this state a prize promotion in which a purchase or payment is necessary to obtain the prize.

(f) Fail to comply with the requirements of section 1a or 1b.

(g) Make a telephone solicitation to a consumer in this state who has requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation is made.

(h) While making a telephone solicitation, misrepresent in a message left for a consumer on his or her answering machine or voice mail that the consumer has a current business matter or transaction or a current business or customer relationship with the telephone solicitor or another person and request that the consumer call the telephone solicitor or another person to discuss that matter, transaction, or relationship.

(2) Except as provided in this subsection, beginning 210 days after the effective date of the amendatory act that added this section, a person who knowingly or intentionally violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both. This subsection does not prohibit a person from being charged with, convicted of, or punished for any other crime including any other violation of law arising out of the same transaction as the violation of this

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section. This subsection does not apply if the violation of this section is a failure to comply with the requirements of section 1a(1), (4), or (5) or section 1b.

(3) A person who suffers loss as a result of violation of this section may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorney fees. This subsection does not prevent the consumer from asserting his or her rights under this act if the telephone solicitation results in a home solicitation sale, or asserting any other rights or claims the consumer may have under applicable state or federal law.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003;—Am. 2006, Act 133, Imd. Eff. May 12, 2006.

445.111d Do-not-call list; notice of description and enrollment; "telecommunication provider" defined.

Sec. 1d. (1) Beginning 210 days after the effective date of the amendatory act that added this section, if a telephone directory includes residential telephone numbers, a person that publishes a new telephone directory shall include in the telephone directory a notice describing the do-not-call list and how to enroll on the do-not-call list.

(2) Beginning 210 days after the effective date of the amendatory act that added this section, each telecommunication provider that provides residential telephone service shall include a notice describing the do-not-call list and how to enroll on the do-not-call list with 1 of that telecommunication provider's bills for telecommunication services to a residential telephone subscriber each year. If the federal communication commission or any other federal agency establishes a federal "do not call" list, the notice shall also describe that list and how to enroll on that list. As used in this subsection, "telecommunication provider" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.111e Applicability of §§ 445.111a, 445.111b, 445.111c, and 445.111d.

Sec. 1e. Sections 1a, 1b, 1c, and 1d do not apply to a person subject to any of the following:

(a) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(b) The public safety solicitation act, 1992 PA 298, MCL 14.301 to 14.327.

(c) Section 527 of the internal revenue code of 1986.

History: Add. 2002, Act 612, Eff. Mar. 31, 2003.

445.112 Right of buyer to cancel home solicitation sale; time; notice of cancellation; restriction on right to cancel; sale subject to debtor's right to rescind.

Sec. 2. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, a buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this act. The seller in a home solicitation sale shall not acquire payment by having an independent courier service or other third party pick up the buyer's payment at the buyer's residence until after the buyer's right-to-revoke period prescribed by this act has expired.

(2) Cancellation occurs when the buyer mails or delivers the notice of cancellation provided for in section 3(2) or any other written notice, or sends a telegram, to the seller at the address stated in the notice of cancellation.

(3) A notice of cancellation or other written notice, if mailed to the seller, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) A written notice or telegram given by the buyer other than the notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) A buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and all of the following conditions are met:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation.

(b) The buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.

(c) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) If a home solicitation sale is also subject to the debtor's right to rescind certain transactions, the buyer may proceed either under those provisions or under this section.

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History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2000, Act 15, Imd. Eff. Mar. 8, 2000.

445.113 Written agreement or offer to purchase; contents; form; cancellation; exceptions; conditions.

Sec. 3. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall present to the buyer and obtain the buyer's signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs.

The agreement or offer to purchase shall contain a statement substantially as follows in immediate proximity to the space reserved in the agreement or offer to purchase for the signature of the buyer:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. Additionally, the seller is prohibited from having an independent courier service or other third party pick up your payment at your residence before the end of the 3-business-day period in which you can cancel the transaction."

(2) The seller shall attach to the copy or cause to be printed on the reverse side of the written agreement or offer to purchase retained by the buyer a notice of cancellation in duplicate that shall appear as follows:

"notice of cancellation
(enter date of transaction)
(date)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (name of seller), at (address of seller's place of business) not later than midnight on

_____
(date)
I hereby cancel this transaction.

_____
(date)

_____
(buyer's signature) "

(3) The notices required by this section shall be in not less than 10-point bold type and shall be 2 points larger than the text of the contract. A written agreement or offer to purchase and the notice of cancellation attached to the agreement or offer shall be written in the same language as that used in any oral presentation that was given to facilitate sale of the goods or services. The seller shall enter on the blanks in the notice of cancellation the date of transaction, which is the date the buyer signs the written agreement, and the date for mailing the notice of cancellation. An error in entering this information shall not diminish the buyer's rights under this act.

(4) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his or her intention to cancel.

(5) This section does not apply to a home solicitation sale where the seller engaged in a telephone solicitation of the sale if sections 505 to 507 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2505 to 484.2507, apply to the solicitation or sale.

(6) This section does not apply to a home solicitation sale of natural gas or electricity if the seller is any of

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the following:

(a) An electric utility or gas utility that is regulated by the commission and complies with any orders or tariffs issued by the commission concerning home solicitations by alternative electric suppliers or alternative gas suppliers in making the solicitation.

(b) An alternative gas supplier or alternative electric supplier licensed by the commission that complies with any applicable orders or tariffs issued by the commission concerning home solicitations in making the solicitation.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978;—Am. 2000, Act 15, Imd. Eff. Mar. 8, 2000;—Am. 2002, Act 612, Eff. Mar. 31, 2003;—Am. 2006, Act 138, Imd. Eff. May 12, 2006.

445.114 Tender of payments or goods to buyer; failure to tender goods; effect of noncompliance.

Sec. 4. (1) Except as provided in this section, within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972.

445.115 Demand by seller for return of goods; care and availability of goods; effect of failure to demand return of goods; compensation for services performed.

Sec. 5. (1) Except as provided by section 4(3), if a home solicitation sale has been canceled or an offer to purchase revoked, a seller may demand the return of goods delivered within 20 days after the cancellation or revocation. The buyer shall take good care of the goods and shall make the goods available for return to the seller at the buyer's residence. If the seller fails to demand return of the goods as prescribed in this subsection, the goods shall become the property of the buyer without obligation.

(2) If the seller has performed any services pursuant to a home solicitation sale before its cancellation, the seller is not entitled to compensation.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 1978, Act 152, Imd. Eff. May 18, 1978.

445.116 Refunds or penalties as set off or defense.

Sec. 6. In connection with a home solicitation sale, refunds or penalties to which the debtor is entitled pursuant to this act may be set off against the debtor's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this act.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972;—Am. 2002, Act 612, Eff. Mar. 31, 2003.

445.117 Action for collection of home solicitation sale contract.

Sec. 7. No person may bring any action in any court of this state for the collection of any home solicitation sale contract without proving that such person was at all times in compliance with this act.

History: 1971, Act 227, Imd. Eff. Jan. 3, 1972.

SECURITY INTERESTS IN CONSUMER GOODS
Act 167 of 1962

445.121-445.125 Repealed. 1964, Act 250, Eff. Aug. 28, 1964.

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UNSOLICITED MERCHANDISE
Act 28 of 1969

AN ACT to prescribe the rights and duties of persons who send and receive unsolicited merchandise.

History: 1969, Act 28, Imd. Eff. July 10, 1969.

The People of the State of Michigan enact:

445.131 Unsolicited merchandise; rights of recipients.

Sec. 1. No person, firm, partnership, association or corporation, or agent or employee thereof, in any manner, or by any means, shall offer for sale goods where the offer includes the voluntary and unsolicited sending of goods by mail or otherwise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods shall be deemed for all purposes an unconditional gift to the recipient. The recipient may refuse to accept delivery of the goods, is not bound to return them to the sender, and may use or dispose of them in any manner he sees fit without any obligation on his part to the sender.

History: 1969, Act 28, Imd. Eff. July 10, 1969.

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REFUND OF DOWN PAYMENT ON VENDOR'S RESCISSION OF SALE
Act 119 of 1964

AN ACT to make it unlawful for vendors of goods to refuse to refund the down payment made upon the purchase price thereof in kind upon rescission of the sale; and to provide a penalty for the violation of this act.

History: 1964, Act 119, Eff. Aug. 28, 1964.

The People of the State of Michigan enact:

445.141 Vendor's rescission of sale of goods; refund; goods, possession.

Sec. 1. When any person, partnership, association or corporation sells goods, wares and merchandise to any person on credit and receives partial payment of the purchase price thereof, and rescinds the sale after investigation of the credit standing of the purchaser, the vendor shall refund in full to the purchaser the entire portion of the purchase price paid. The refund shall be in money or in the goods received as partial payment of the goods purchased on credit. The vendor shall not make refund in any other manner. The provisions of this act shall apply when the vendor has possession of the goods while the credit investigation is being made.

History: 1964, Act 119, Eff. Aug. 28, 1964.

445.142 Violation of act; penalty.

Sec. 2. Any person who violates the provisions of this act is guilty of a misdemeanor.

History: 1964, Act 119, Eff. Aug. 28, 1964.

TRADEMARKS, BRANDS, AND NAMES
Act 50 of 1937

445.151-445.154 Repealed. 1975, Act 211, Eff. Mar. 31, 1976.

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BILLING FOR CLINICAL LABORATORY SERVICES
Act 358 of 1972

AN ACT to regulate the billing or payment of a purveyor of clinical laboratory services; and to prescribe penalties.

History: 1972, Act 358, Imd. Eff. Jan. 9, 1973.

The People of the State of Michigan enact:

445.161 Clinical laboratory work; billing patient or third party in excess of amount billed licensed person.

Sec. 1. A person licensed to practice medicine by an agency of the department of licensing and regulation, a hospital, agency or any other entity billing patients or third parties for laboratory work, shall not bill a patient for laboratory work performed by a clinical laboratory for any amount in excess of the amount billed by the clinical laboratory to the licensed person for such services.

History: 1972, Act 358, Imd. Eff. Jan. 9, 1973.

445.162 Physicians not to receive fee from laboratory.

Sec. 2. A person licensed to practice medicine by an agency of the department of licensing and regulation shall not receive a fee or other remuneration from a clinical laboratory or an intermediary for a clinical laboratory for submitting specimens from patients to a clinical laboratory.

History: 1972, Act 358, Imd. Eff. Jan. 9, 1973.

445.163 Violation; penalty.

Sec. 3. A person who is in violation of section 1 shall be guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $500.00 or both.

History: 1972, Act 358, Imd. Eff. Jan. 9, 1973.

BAKERY AND PETROLEUM PRODUCTS
Act 282 of 1937

445.171-445.184 Repealed. 1984, Act 274, Eff. Mar. 29, 1985.

REDEMPTION OF CERTAIN BOTTLES
Act 142 of 1971

445.191 Repealed. 1976, Initiated Law, Eff. Dec. 3, 1978.

COLLECTION AGENCIES
Act 180 of 1941

445.201-445.209 Repealed. 1974, Act 361, Eff. July 1, 1975.

COLLECTION PRACTICES ACT
Act 361 of 1974

445.211-445.245 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

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REGULATION OF COLLECTION PRACTICES
Act 70 of 1981

AN ACT to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

The People of the State of Michigan enact:

445.251 Definitions.

Sec. 1. As used in this act:

(a) "Claim" or "debt" means an obligation or alleged obligation for the payment of money or thing of value arising out of an expressed or implied agreement or contract for a purchase made primarily for personal, family, or household purposes.

(b) "Collection agency" means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another person, arising out of an expressed or implied agreement. Collection agency includes a person representing himself or herself as a collection or repossession agency or a person performing the activities of a collection agency, on behalf of another, which activities are regulated by Act No. 299 of the Public Acts of 1980, as amended, being sections 339.101 to 339.2601 of the Michigan Compiled Laws. Collection agency includes a person who furnishes or attempts to furnish a form or a written demand service represented to be a collection or repossession technique, device, or system to be used t o collect or repossess claims, if the form contains the name of a person other than the creditor in a manner indicating that a request or demand for payment is being made by a person other than the creditor even though the form directs the debtor to make payment directly to the creditor rather than to the other person whose name appears on the form. Collection agency includes a person who uses a fictitious name or the name of another in the collection or repossession of claims to convey to the debtor that a third person is collecting or repossessing or has been employed to collect or repossess the claim.

(c) "Communicate" means the conveying of information regarding a debt directly or indirectly to a person through any medium.

(d) "Consumer" or "debtor" means a natural person obligated or allegedly obligated to pay a debt.

(e) "Creditor" or "principal" means a person who offers or extends credit creating a debt or a person to whom a debt is owed or due or asserted to be owed or due. Creditor or principal does not include a person who receives an assignment or transfer or a debt solely for the purpose of facilitating collection of the debt for the assignor or transferor. In those instances, the assignor or transferor of the debt shall continue to be considered the creditor or the principal for purposes of this act.

(f) "Person" means an individual, sole proprietorship, partnership, association, or corporation.

(g) "Regulated person" means a person whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency including the following:

(*i*) A regular employee when collecting accounts for 1 employer if the collection efforts are carried on in the name of the employer.

(*ii*) A state or federally chartered bank when collecting its own claim.

(*iii*) A trust company when collecting its own claim.

(*iv*) A state or federally chartered savings and loan association when collecting its own claim.

(*v*) A state or federally chartered credit union when collecting its own claim.

(*vi*) A licensee under Act No. 21 of the Public Acts of 1939, as amended, being sections 493.1 to 493.26 of the Michigan Compiled Laws.

(*vii*) A business licensed by the state under a regulatory act by which collection activity is regulated.

(*viii*) An abstract company doing an escrow business.

(*ix*) A licensed real estate broker or salesperson if the claim being handled by the broker or salesperson is related to or in connection with the broker or salesperson's real estate business.

(*x*) A public officer or a person acting under court order.

(*xi*) An attorney handling claims and collections on behalf of a client and in the attorney's own name.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.252 Prohibited acts.

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Sec. 2. A regulated person shall not commit 1 or more of the following acts:

(a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau.

(b) Using forms or instruments which simulate the appearance of judicial process.

(c) Using seals or printed forms of a government agency or instrumentality.

(d) Using forms that may otherwise induce the belief that they have judicial or official sanction.

(e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.

(f) Misrepresenting in a communication with a debtor 1 or more of the following:

(*i*) The legal status of a legal action being taken or threatened.

(*ii*) The legal rights of the creditor or debtor.

(*iii*) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.

(*iv*) That accounts have been turned over to innocent purchasers for value.

(g) Communicating with a debtor without accurately disclosing the caller's identity or cause expenses to the debtor for a long distance telephone call, telegram, or other charge.

(h) Communicating with a debtor, except through billing procedure when the debtor is actively represented by an attorney, the attorney's name and address are known, and the attorney has been contacted in writing by the credit grantor or the credit grantor's representative or agent, unless the attorney representing the debtor fails to answer written communication or fails to discuss the claim on its merits within 30 days after receipt of the written communication.

(i) Communicating information relating to a debtor's indebtedness to an employer or an employer's agent unless the communication is specifically authorized in writing by t he debtor subsequent to the forwarding of the claim for collection, the communication is in response to an inquiry initiated by the debtor's employer or the employer's agent, or the communication is for the purpose of acquiring location information about the debtor.

(j) Using or employing, in connection with collection of a claim, a person acting as a peace or law enforcement officer or any other officer authorized to serve legal papers.

(k) Using or threatening to use physical violence in connection with collection of a claim.

(*l*) Publishing, causing to be published, or threatening to publish lists of debtors, except for credit reporting purposes, when in response to a specific inquiry from a prospective credit grantor about a debtor.

(m) Using a shame card, shame automobile, or otherwise bring to public notice that the consumer is a debtor, except with respect to a legal proceeding which is instituted.

(n) Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor. All communications shall be made from 8 a.m. to 9 p.m. unless the debtor expressly agrees in writing to communications at another time. All telephone communications made from 9 p.m. to 8 a.m. shall be presumed to be made at an inconvenient time in the absence of facts to the contrary.

(o) Using profane or obscene language.

(p) Using a method contrary to a postal law or regulation to collect an account.

(q) Failing to implement a procedure designed to prevent a violation by an employee.

(r) Communicating with a consumer regarding a debt by post card.

(s) Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan Compiled Laws, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.253 Cease and desist order; hearing; failure to comply with order; action in circuit court; fine.

Sec. 3. (1) The attorney general may order a regulated person to cease and desist from violating this act.

(2) A regulated person ordered to cease and desist is entitled to a hearing before the appropriate officer as determined by the attorney general if he or she files a written request within 30 days after the effective date of the order.

(3) If a regulated person fails to comply with a cease and desist order issued pursuant to this act, the attorney general may commence an action in the circuit court for Ingham county or in a circuit court for a

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county where the person is doing business, to enjoin violations of the cease and desist order or to seek enforcement of a previously issued order. The court may impose a fine or not more than $500.00 for each violation of the cease and desist order.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.254 Action to restrain act or practice; injunction and other equitable orders or judgments.

Sec. 4. The attorney general may bring an action to restrain, by temporary or permanent injunction, an act or practice in violation of this act. The action may be brought in the circuit court for the county where the defendant resides or conducts business. The court may issue a temporary or permanent injunction and make other equitable orders or judgments, including restitution to consumers.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.255 Assurance of discontinuance; contents; filing; record; opening closed matter for further proceedings.

Sec. 5. When the attorney general has authority to institute an action pursuant to section 4, the attorney general may accept an assurance of discontinuance of any method, act, or practice from the person alleged to be engaged in or to have been engaged in a violation. The assurance may include the stipulation for the voluntary payment, by the person, of the costs of investigation, an amount for restitution to aggrieved persons, or both. An assurance of discontinuance shall be in writing and filed with the circuit court. The clerk of the court shall maintain a record of the filings. A matter closed pursuant to this section may be opened by the attorney general for further proceedings.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.256 Wilful violation of act or engaging in recurring course of wilful conduct in violation of act; penalties.

Sec. 6. (1) In an action brought under this act, if the court finds that a regulated person has wilfully violated this act, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil fine not exceeding $500.00 per violation.

(2) A regulated person engaging in a recurring course of wilful conduct in violation of this act shall be fined not more than $5,000.00 for the first offense, and not more than $10,000.00, or imprisoned for not more than 1 year, or both, for a second or subsequent offense.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.257 Action for damages or equitable relief; amount of recovery; civil fine; attorney's fees and court costs.

Sec. 7. (1) A person who suffers injury, loss, or damage, or from whom money was collected by the use of a method, act, or practice in violation of this act may bring an action for damages or other equitable relief.

(2) In an action brought pursuant to subsection (1), if the court finds for the petitioner, recovery shall be in the amount of actual damages or $50.00, whichever is greater. If the court finds that the method, act, or practice was a wilful violation, the court may assess a civil fine of not less than 3 times the actual damages, or $150.00, whichever is greater, and shall award reasonable attorney's fees and court costs incurred in connection with the action.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

445.258 Communications with person other than debtor for purpose of acquiring location information; required statements.

Sec. 8. (1) A regulated person communicating with any person other than the debtor, for the purpose of acquiring location information about the debtor, shall state all of the following:

(a) The name of the individual seeking the location information.

(b) Whether the purpose of the communication is for confirmation or correction of location information about the debtor.

(2) For purposes of this act, location information shall consist only of a debtor's place of abode and place of employment and the telephone number at each place.

History: 1981, Act 70, Imd. Eff. June 29, 1981.

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REPORTING ADVERSE INFORMATION ABOUT COSIGNER
Act 211 of 1989

AN ACT to require notice to cosigners; to impose duties on persons who report adverse information regarding an indebtedness; to provide remedies; and to impose penalties.

History: 1989, Act 211, Eff. Mar. 29, 1990.

The People of the State of Michigan enact:

445.271 Definitions.

Sec. 1. As used in this act:

(a) "Adverse information" means information indicating that the cosigner has not complied with the contractual provisions of an obligation.

(b) "Collection action" means requesting a cosigner to pay all or part of the obligation.

(c) "Cosigner" means a natural person who renders himself or herself liable for the obligation of another person without compensation. The term includes a person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest under state law, or a person who has executed a guarantee. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this act whether or not he or she is designated as a cosigner on a credit obligation.

(d) "Obligation" means an indebtedness incurred by an individual for personal, family, or household purposes.

(e) "Person" means an individual, firm, partnership, association, or corporation.

(f) "Primary obligor" means a person, other than a cosigner, who signs an obligation as a debtor.

History: 1989, Act 211, Eff. Mar. 29, 1990.

445.272 Reporting adverse information about cosigner; notice; response; prohibition.

Sec. 2. (1) Before reporting adverse information about a cosigner to a consumer reporting agency as defined in the fair credit reporting act, 15 U.S.C. 1681-1681t, concerning the obligation that was cosigned or providing any information regarding the cosigner's obligation to a collection agency as defined in section 901 of the occupational code, Act No. 299 of the Public Acts of 1980, being section 339.901 of the Michigan Compiled Laws, concerning the obligation that was cosigned or taking any collection action on the obligation against the cosigner that was cosigned, other than orally communicating the information permitted in subdivision (a), a person shall do both of the following:

(a) Send to the cosigner, by first class mail, a notice indicating that the primary obligor has become delinquent or defaulted on the obligation and that the cosigner is responsible for payment of the obligation.

(b) Allow the cosigner not less than 30 days from the date that the notice was sent to respond to the notice by doing either of the following:

(*i*) Paying the amount then due and owing under the obligation.

(*ii*) Making other arrangements satisfactory to the person to whom the obligation is owed.

(2) A person shall not report adverse information regarding a cosigner if the cosigner has responded to a notice in the manner described in subsection (1)(b).

History: 1989, Act 211, Eff. Mar. 29, 1990.

445.273 Action by cosigner; notice; statement; resolution.

Sec. 3. (1) A cosigner who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorney's fees.

(2) Not less than 30 days prior to bringing an action as provided in subsection (1), the cosigner shall notify the person alleged to have violated this act of his or her intention to bring an action. The notice shall include a statement of the specific evidence which proves the loss suffered by the cosigner. If within 25 days after the date of receiving the notice, the person alleged to have violated this act tenders to the cosigner an amount equal to the loss, or otherwise resolves the matter to the cosigner's satisfaction, the cosigner shall be barred from further recovery for that loss, including reasonable attorney's fees.

History: 1989, Act 211, Eff. Mar. 29, 1990.

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POULTRY
Act 100 of 1927

AN ACT to regulate the buying and selling of poultry; to aid in the detection of and prevention of crime in the purchase and sale of poultry, and to provide a penalty therefor.

History: 1927, Act 100, Eff. Sept. 5, 1927.

The People of the State of Michigan enact:

445.301 Purchasing poultry for resale; record.

Sec. 1. Any person, firm or corporation engaged in the business of purchasing poultry for the purpose of resale shall keep a record of the date of each such purchase, the name and residence of the seller, kind of poultry purchased and the description and number thereof, whether such poultry was raised by the seller or purchased from others, and if purchased from others, then the name of the person from whom the same was purchased by the seller and the date of such purchase, and if the seller delivers such poultry by means of automobile or other vehicle having a license thereon, then the number of such license.

History: 1927, Act 100, Eff. Sept. 5, 1927;—CL 1929, 9732;—CL 1948, 445.301.

445.302 Duty of seller; statement, signature.

Sec. 2. The seller shall at the time of making sale of any poultry as provided in the preceding section, truthfully state all of the facts as aforesaid; shall sign his name to such statement and shall certify to the correctness thereof.

History: 1927, Act 100, Eff. Sept. 5, 1927;—CL 1929, 9733;—CL 1948, 445.302.

445.303 Blanks for record; furnished by secretary of state.

Sec. 3. Each and every person, firm or corporation, so purchasing poultry as aforesaid, shall procure from the secretary of state, suitable blanks for such record. It shall be the duty of said secretary of state to furnish said blanks free of cost to the applicant upon demand; and all purchasers of poultry as hereinbefore designated, shall order and keep on hand a supply of such blanks.

History: 1927, Act 100, Eff. Sept. 5, 1927;—CL 1929, 9734;—CL 1948, 445.303.

445.304 Blanks for record; custody, inspection.

Sec. 4. All such blanks when filled shall constitute a record of the purchase or purchases made; shall be safely kept by such purchasers for a period of 1 year and shall at all times be open to the inspection of all sheriffs, their deputies, police officers, or other law enforcement officers of this state upon demand by such officer.

History: 1927, Act 100, Eff. Sept. 5, 1927;—CL 1929, 9735;—CL 1948, 445.304.

445.305 Violation of act; penalty.

Sec. 5. Any person violating any of the provisions of the foregoing sections, shall be deemed guilty of a misdemeanor and punishable by any court of competent jurisdiction, by a fine of not exceeding 100 dollars or imprisonment in the county jail of the county where the offense is committed, for a period of not exceeding 90 days, or both such fine and imprisonment in the discretion of the court, together with the costs of prosecution.

History: 1927, Act 100, Eff. Sept. 5, 1927;—CL 1929, 9736;—CL 1948, 445.305.

SALE OF FARM PRODUCTS ON COMMISSION
Act 184 of 1913

445.331-445.341 Repealed. 2001, Act 144, Imd. Eff. Oct. 26, 2001.

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PRICING AND ADVERTISING OF CONSUMER ITEMS
Act 449 of 1976

AN ACT to regulate the pricing of consumer items and the advertising of consumer items, services, goods, merchandise, commodities, and real property; to prescribe the powers and duties of certain state and local officials in relation thereto; to provide remedies and penalties; and to repeal certain acts and parts of acts.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

The People of the State of Michigan enact:

445.351 Definitions.

Sec. 1. As used in this act:

(a) "Advertising" means all representations disseminated in any manner by any means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of a consumer item, service, good, merchandise, commodity, or real property.

(b) "Automatic checkout system" means an electronic device, computer, or machine which determines the price of a consumer item by using a product identity code, and may but is not required to include an optical scanner.

(c) "Class of item" means a group of consumer items which may vary by brand, style, pattern, color, or size other than weight or volume. Items within a class must otherwise be identical and offered at the same total price.

(d) "Consumer item" means an article of tangible personal property used or consumed, or bought for use or consumption, primarily for personal, family, or household purposes.

(e) "Director" means the director of the department of agriculture or his authorized representative.

(f) "Person" means an individual, firm, partnership, corporation, association, or other legal entity.

(g) "Sale at retail" means the transfer of an interest in a consumer item by a person regularly and principally engaged in the business of selling consumer items to a buyer for use or consumption and not for resale.

(h) "Total price" means the full purchase price of a consumer item, excluding sales tax and container deposit.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.352 Implementation and administration of §§ 445.353 and 445.354; investigations; rules.

Sec. 2. The director shall be responsible for the implementation and administration of sections 3 and 4 and:

(a) Shall investigate complaints concerning violations of sections 3 and 4, and shall conduct such other investigations as he deems advisable.

(b) Shall, as the state director of weights and measures, promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, for the implementation and administration of sections 3 and 4.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

Administrative rules: R 285.555.1 et seq. of the Michigan Administrative Code.

445.353 Stamping or affixing total price of consumer item; exemptions; lists and signs for classes of items or individual items, "item" defined.

Sec. 3. (1) The total price of a consumer item displayed or offered for sale at retail shall be clearly and conspicuously indicated in arabic numerals, so as to be readable and understandable by visual inspection, and shall be stamped upon or affixed to the consumer item. If the consumer item is in a package or container, the total price shall be stamped upon or affixed to the outside surface of the package or container and need not be placed directly upon the consumer item.

(2) The requirements of subsection (1) shall not apply to:

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(a) A consumer item sold by weight or volume which is not in a package or container.

(b) A consumer item sold in a coin operated vending machine.

(c) Prepared food intended for immediate consumption, as defined in section 4g of Act No. 167 of the Public Acts of 1933, being section 205.54g of the Michigan Compiled Laws.

(d) A consumer item purchased by mail or through catalog order, or which is not otherwise vis ible for inspection by the consumer at the time of the sale, and which is ordered or requested by the consumer, if the price of the item is on the consumer's written order or request or on a bill, invoice, or other notice which describes or names the item and which is enclosed with the item.

(e) An unpackaged food item.

(f) A consumer item which has a total weight of not more than 3 ounces, a total volume of not more than 3 cubic inches, and a total price of not more than 30 cents.

(g) Live plants.

(h) Live animals.

(i) Motor vehicles.

(j) Motor vehicle parts.

(k) Packages of 20 or fewer cigarettes.

(*l*) Greeting cards sold individually which have a readable coded price on the back of the card.

(m) Merchandise ordered as a gift by a consumer which is sent by mail or other delivery service to a person other than the consumer by the retailer at the request of the consumer.

(3) In addition to the exemptions allowed in subsection (2), a retailer may choose to not individually price mark not more than 25 classes of items or individual items which classes or items shall be listed and posted in a conspicuous place in the retail store, and may choose to not individually price mark not more than 25 additional classes of items or individual items which are advertised or featured at a reduced price.

(4) The price and the name or description of a class of items or individual items not marked pursuant to subsection (3) shall be indicated by a clear, readable, and conspicuous sign in immediate conjunction with the area in which the unmarked item or class of items is displayed.

(5) As used in subsections (3) and (4), “item”, except as otherwise provided in this subsection, means 1 or more identical articles, sold in identical quantities or measures. An item may include more than 1 product, brand, kind, size, or type of packaging, if they are packaged together and sold as a set and the sets are identical in all respects, including quantity or measure.

History: 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.354 Charging more or less than price indicated; evidence of violation.

Sec. 4. (1) A person shall not knowingly charge or attempt to charge for a consumer item a retail sale price exceeding the price required to be indicated pursuant to section 3. It shall not be construed to be a violation of this act to charge for a consumer item a total price less than the price required to be indicated pursuant to section 3.

(2) It shall be prima facie evidence of a violation of this section if a price charged or attempted to be charged as a result of electronic identification or calculation by an automatic checkout system exceeds the price required to be indicated pursuant to section 3.

History: 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.355 Advertising availability of consumer item at sale price, special price, or reduced price; dates and quantity available; requirements for advertising at specific price through media; written guarantee to deliver; providing similar item; holding item for delivery; exceptions.

Sec. 5. (1) A person shall not knowingly advertise the availability of a consumer item for sale at retail at a sale or special price or as being reduced in price by an amount or proportion unless the advertisement includes the dates that item is available, or the quantity available at the advertised price together with information that the item is available at that price only as long as the advertised quantity lasts. A limitation on the quantity available of a consumer item per customer shall be clearly disclosed in an advertisement of the consumer item.

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(2) If a consumer item is advertised at a specific price through the media which is not indicated to be a special, sale, or reduced price the advertiser shall do one of the following:

(a) Make the consumer item available at the advertised price for not less than 5 days after the date the consumer item was last advertised. If the item is not available for this period of time the requirements of subsection (3) shall apply. The advertiser shall not be required to make the consumer item available nor fulfill the requirements of subsection (3) if the unavailability of the consumer item is due to a governmental action, a plant closing, or an act of God and if the specific cause of the unavailability of the consumer item is posted conspicuously for the review of the consumer.

(b) Indicate in the advertisement the dates the consumer item is available at the advertised price. If the item is not available for the period of time indicated, the requirements of subsection (3) shall apply.

(c) Indicate in the advertisement the quantity available at the advertised price together with the information that the consumer item is available at the advertised price only as long as the stated quantity lasts.

(3) If an advertisement under this section does not state the quantity of the consumer item available, and if an item of merchandise cannot be sold at the advertised price throughout the advertised period of sale, the advertiser shall make available to the customer a written guarantee to deliver under the advertised conditions the consumer item at a future date stated in the guarantee, or upon notification of the customer by the merchant. If the advertised consumer item cannot be obtained to satisfy the condition of the guarantee, the advertiser may provide a similar consumer item of equal or greater monetary value. The notification of availability shall take place not more than 90 days after the guarantee is given. After the notice of availability is given, the merchant shall hold the consumer item for delivery to the customer for not less than 7 days, except the merchant need hold the consumer item for only 2 days if it is a perishable item.

(4) This section shall not apply to baked goods, fresh fruit, and fresh vegetables.

History: 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.356 Advertisement; untrue, deceptive, or misleading statement or representation; failure or refusal to sell in manner or at price advertised; determination of deceptive or misleading advertising; intent not to sell; defective, blemished, or rejected goods, merchandise, or commodities; seconds; identification.

Sec. 6. (1) A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement which contains a statement or representation which is untrue, deceptive, or misleading.

(2) The failure to sell goods, merchandise, commodities, or services in the manner advertised, or the refusal to sell at the price at which it was advertised, or in accordance with other terms and conditions of the advertisement creates a rebuttable presumption of an intent to violate this act.

(3) In determining whether advertising is deceptive or misleading, the extent to which the advertising fails to reveal facts which are material in light of the representations made or suggested in a positive manner shall be taken into account.

(4) A person shall not make, publish, disseminate, circulate, or place before the public an advertisement with the intent, design, or purpose not to sell at the price stated in the advertisement, or otherwise communicated, or with intent not to sell the goods, merchandise, commodities, or service so advertised.

(5) A person shall not advertise, call attention to, or give publicity to the sale of goods, merchandise, or commodities which are known to be substantially defective and therefore not first class, or which consist of articles or units or parts known as seconds or blemished goods, merchandise, or commodities, which goods, merchandise, or commodities have been rejected by the manufacturer of the goods, merchandise, or commodities as not being first class, unless there is displayed directly in connection with the name and description of the goods, merchandise, or commodities, a direct and unequivocal statement, phrase, or word which will clearly indicate that the goods, merchandise, or commodities so advertised are seconds or are blemished goods, merchandise, or commodities, or have been rejected by the manufacturer of the goods, merchandise, or commodities. Merchandise advertised, offered for sale, and sold as a unit or set consisting of more than 1 part or piece shall be sufficiently identified as not first class, within the meaning of this section, if advertised, offered for sale, and sold as a unit or set at the single price advertised, and displayed in connection with a direct and unequivocal statement, phrase, or word identifying the goods as not first class as required by this section.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

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Popular name: Item Pricing Act

445.357 Discrimination in advertising real property; evidence; legal or equitable remedies.

Sec. 7. A person shall not make, publish, disseminate, circulate, or place before the public, an advertisement concerning the buying, selling, exchanging, or trading of real property if that advertising contains language expressing discrimination on the part of the seller concerning prospective buyers because of race, creed, color, national origin, sex, or marital status. This act shall not authorize the attorney general to assume facts not in evidence. The attorney general shall at all times bear the burden of proof to all charges made against a party. This act shall not diminish the right of a party to direct and immediate legal or equitable remedies in the courts of this state.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.358 Publication of advertisement in good faith and without knowledge of falsity or deception.

Sec. 8. This act shall not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, circular, including those circulars prepared for national distribution, or outdoor advertising or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character of an advertisement, publishes, causes to be published, or takes part in the publication of an advertisement in violation of this act.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.359 Injunction; assurance of discontinuance; notice of violation; penalty; jurisdiction; rules.

Sec. 9. (1) The attorney general may maintain an action to enjoin a continuing violation of this act. If the court finds that the defendant is violating or has violated this act, it shall enjoin him from a continuance of that violation. It shall not be necessary that actual damages to a person be alleged or proved.

(2) A proceeding shall not be instituted for an injunction unless the attorney general has notified the defendant of his intention to seek an injunction if the defendant does not cease and desist or take positive action to cease and desist from continuing to act in violation of this act. The notice shall be given at least 48 hours before the filing of the action. An injunction shall not issue if the defendant has ceased or has taken positive action to cease and desist violating this act, upon receipt of the notice.

(3) The attorney general may accept an assurance of discontinuance of a practice alleged to be in violation of this act from the person engaging in, or who was engaged in, that practice. The assurance of discontinuance shall be in writing and be filed with the clerk of the circuit court of the county in which the alleged violator resides or has his principal place of business. A filing fee shall not be required for the filing of an assurance with the clerk of the circuit court. The assurance of discontinuance shall be signed by the person and shall contain a statement describing the acts or practices for which the assurance of discontinuance is being given and the specific sections of the law prohibiting those acts or practices. The assurance is not an admission of any fact or issue at law.

(4) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information he may have to the office of the attorney general.

(5) A person who knowingly violates this act or the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than $1,000.00 for the first violation and not more than $5,000.00 for the second and any subsequent violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section.

(6) The attorney general may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, to implement and administer sections 5 to 12 of this act.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

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Popular name: Item Pricing Act

Administrative rules: R 14.201 et seq. of the Michigan Administrative Code.

445.360 Declaratory judgment; injunction; damages; attorneys' fees.

Sec. 10. (1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following if the attorney general or prosecuting attorney fails to initiate action within 60 days after receiving notice of an alleged violation of this act:

(a) Obtain a declaratory judgment that a practice is in violation of this act.

(b) Enjoin by temporary or permanent injunction a person who is engaging or is about to engage in a practice in violation of this act.

(2) Except as provided in section 10a, a person who suffers loss as a result of a violation of this act may bring an individual or a class action to recover actual damages or $250.00, whichever is greater, for each day on which violations of this act have been found together with reasonable attorneys' fees not to exceed $300.00 in an individual action.

History: 1976, Act 449, Eff. Jan. 1, 1978;—Am. 1984, Act 344, Eff. Mar. 29, 1985.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.360a Section applicable to sale at retail; conditions; conditions to bringing or joining in action; exception.

Sec. 10a. (1) Except as provided in subsection (3), this section applies to a sale at retail which meets all of the following conditions:

(a) There is a price stamped on or affixed to the item.

(b) The sale is recorded by an automatic checkout system.

(c) The buyer is given a receipt which describes the item and states the price charged for the item.

(2) Before bringing or joining in an action as provided in section 10(2), within 30 days after purchasing an item, a buyer who suffers loss because the price charged for the item is more than the price stamped on or affixed to the item shall notify the seller in person or in writing that the price charged is more than the price stamped or affixed. The notice shall include evidence of the loss suffered by the buyer. If, within 2 days after the notification, the seller tenders to the buyer an amount equal to the difference between the price stamped or affixed and the price charged, plus an amount equal to 10 times that difference but which is not less than $1.00 or more than $5.00, the buyer is barred from any further recovery for that loss. If the loss is suffered by 1 buyer within 1 transaction on 2 or more identical items, the amount to be tendered by the seller shall be the difference on each item, plus an amount equal to 10 times the difference on a single item but which is not less than $1.00 and not more than $5.00. If the seller does not tender this amount, the buyer may bring or join in an action as provided in section 10(2).

(3) This section does not apply to a sale at retail in which the seller intentionally charges more for an item than the price stamped on or affixed to the item.

History: Add. 1984, Act 344, Eff. Mar. 29, 1985.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.361 Investigation and action by prosecuting attorney.

Sec. 11. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.362 Other causes of action not affected; liberal construction; inconsistent ordinance or regulation prohibited.

Sec. 12. This act shall not affect any other cause of action which is available and shall be liberally construed to effectuate its purpose. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated under this act.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

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445.362a Provisions inapplicable to nonprofit food cooperatives.

Sec. 12a. This act shall not apply to nonprofit food cooperatives.

History: Add. 1979, Act 193, Imd. Eff. Dec. 21, 1979.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.363 Repeal of §§ 445.801 to 445.809.

Sec. 13. Act No. 241 of the Public Acts of 1966, being sections 445.801 to 445.809 of the Compiled Laws of 1970, is repealed.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

445.364 Effective date.

Sec. 14. This act shall take effect January 1, 1978.

History: 1976, Act 449, Eff. Jan. 1, 1978.

Popular name: Scanner Law

Popular name: Item Pricing Act

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TRANSIENT MERCHANTS
Act 51 of 1925

AN ACT to license and regulate the business of transient merchants, to provide penalties for the violation of this act, and to repeal certain inconsistent acts.

History: 1925, Act 51, Eff. Aug. 27, 1925.

The People of the State of Michigan enact:

445.371 Definitions.

Sec. 1. As used in this act

(a) "Transient merchant" means any person, firm, association, or corporation engaging temporarily in a retail sale of goods, wares, or merchandise, in any place in this state and who, for the purpose of conducting business, occupies any lot, building, room, or structure of any kind. The term shall not apply to any of the following:

(*i*) A person selling goods, wares, or merchandise of any description raised, produced, or manufactured by the individual offering the same for sale.

(*ii*) A person soliciting orders by sample, brochure, or sales catalog for future delivery or making sales at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

(*iii*) A person handling vegetables, fruits, or perishable farm products at any established city or village market.

(*iv*) A person operating a store or refreshment stand at a resort or having a booth on or adjacent to the property owned or occupied by him or her.

(*v*) A person operating a stand on any fairgrounds.

(*vi*) A person selling at an art fair or festival or similar event at the invitation of the event's sponsor if all of the following conditions are met:

(A) The sponsor is a governmental entity or nonprofit organization.

(B) The person provides the sponsor with the person's sales tax license number.

(C) The sponsor provides a list of the event's vendors and their sales tax license numbers to the county treasurer and the state treasurer.

(b) "Person" includes any corporation, or partnership, or 2 or more persons having a joint or common interest.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9748;—CL 1948, 445.371;—Am. 1988, Act 292, Imd. Eff. Aug. 4, 1988.

Former law: See Act 259 of 1899; Act 191 of 1901, being CL 1915, §§ 6984 to 7000; Act 294 of 1913, being CL 1915, §§ 7001 to 7009; Act 191 of 1915; and Act 383 of 1921.

445.372 Transient merchants; license required.

Sec. 2. It shall be unlawful for any person, either as principal or agent, to engage in business as a transient merchant in the state of Michigan without having first obtained a license in the manner herein provided.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9749;—CL 1948, 445.372.

445.373 Application for license; contents; attachment; service of process; deposit or surety bond; fee; issuance and expiration of license; copies to state treasurer; display of license.

Sec. 3. Any person desiring to engage in a business shall make and file with the county treasurer of the county in which he or she intends to do business a written application stating the applicant's name, residence, federal taxpayer identification number, number of employees, state employer identification number, place where he or she intends to do business, and kind of business. A copy of the applicant's Michigan sales tax license shall be attached to the application, except for an applicant selling only food for human consumption as defined in section 4g of Act No. 167 of the Public Acts of 1933, being section 205.54g of the Michigan Compiled Laws. If the applicant is acting as agent for another person, the applicant shall cause to be filed with the county treasurer a power of attorney appointing the county treasurer the agent of the principal on whom service of process may be made in any suit commenced against the principal. The applicant shall at the same time deposit $500.00 with the county treasurer, or file a surety company bond for that amount. The applicant shall also pay the county treasurer a $25.00 license fee. Upon receiving the fees, the county treasurer shall issue to the applicant the license if satisfied that the business to be conducted by the person is not intended to cheat or defraud the public. A license issued under this section shall expire on the December thirty-first after its issuance. Not more than 10 days after issuing a license, the county treasurer shall send a copy of the license and the completed application to the state treasurer. The license shall be displayed in full view at the

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place of business.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9750;—CL 1948, 445.373;—Am. 1988, Act 292, Imd. Eff. Aug. 4, 1988.

445.374 License; deposit; subjection to claims; balance, deposit.

Sec. 4. Deposits made with such county treasurer as required by the preceding section shall be subject to claims of creditors and claims for local license fees on behalf of any city, village or township in all cases where a judgment has been obtained against such transient merchant in any court in this state and the time for appealing such judgment has expired. In such cases garnishment proceedings may be commenced in such court against said county treasurer. It shall thereupon be the duty of the county treasurer to remit to any such court any balance of said cash deposit remaining in his hands not exceeding the amount of said judgment, for the purpose of satisfying the same. Any balance of said cash deposit remaining in the hands of the county treasurer 4 months after the expiration of said license shall be remitted to said transient merchant, provided, if, at such date, the county treasurer shall have received notice of any suit then pending against said transient merchant, said deposit shall not be returned until 60 days after the termination of such suit.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9751;—CL 1948, 445.374.

445.375 License; invalidation, exhaustion of deposit; revocation.

Sec. 5. Any such license shall be void as soon as the deposit made with the county treasurer as provided in section 3 hereof shall have been exhausted because of garnishment suits as mentioned in the preceding section. Such county treasurer may revoke any license issued by him hereunder, for good cause shown, after giving the licensee reasonable notice and opportunity to be heard.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9752;—CL 1948, 445.375.

445.376 Transient merchants; evidence.

Sec. 6. Transaction of business as defined in section 1 of this act by any person for a period of less than 6 months consecutively shall be prima facie evidence that such person was a transient merchant within the intent and meaning hereof.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9753;—CL 1948, 445.376.

445.377 Violation as misdemeanor; penalty; impounding goods; recovery or sale of impounded goods; notice; conduct of sale; disposition of proceeds; liability.

Sec. 7. (1) A person who violates this act is guilty of a misdemeanor, punishable by a fine of $1,000.00 or 10% of the value of any property impounded pursuant to this section, whichever amount is greater and court costs. If the county sheriff or local law enforcement officer has probable cause to believe that a person is engaging in business as a transient merchant without having first obtained a license in the manner provided for in this act, the county sheriff or local law enforcement officer shall immediately take into custody and impound all goods offered for sale by the transient merchant until the matter has been adjudicated by a court of proper jurisdiction.

(2) The transient merchant may obtain his or her impounded goods prior to adjudication by paying, either in cash or by security bond, $1,000.00 or an amount equal to the value of the impounded property, whichever amount is greater.

(3) If the transient merchant is convicted of violating this act and fails to pay the fine and court costs provided in subsection (1) within 7 days after the date of conviction, the sheriff or local law enforcement officer shall sell the impounded goods by publishing notice in a newspaper of general circulation in the county at least 5 days before the sale. The notice shall describe the property and shall state the time and place of public sale at which the impounded property may be purchased by the highest bidder.

(4) The sheriff or local law enforcement officer shall conduct the sale and shall deposit from the proceeds of the sale an amount equal to the fine and court costs provided in subsection (1) with the court in which the transient merchant was convicted. Any proceeds of the sale which exceed the fine shall be returned to the transient merchant. Any sheriff or local law enforcement officer disposing of property in the manner provided in this act shall not be liable to the transient merchant for the sale.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9754;—CL 1948, 445.377;—Am. 1988, Act 292, Imd. Eff. Aug. 4, 1988.

445.378 Effect of act as to local license or regulation.

Sec. 8. Nothing in this act contained shall interfere with the licensing or regulation of said business by any municipality, township, or county in this state not inconsistent with the provisions hereof.

History: 1925, Act 51, Eff. Aug. 27, 1925;—CL 1929, 9755;—CL 1948, 445.378.

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SECONDHAND DEALERS AND JUNK DEALERS
Act 350 of 1917

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.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—Am. 1939, Act 15, Eff. Sept. 29, 1939.

The People of the State of Michigan enact:

445.401 Second hand or junk dealer; license required; internet drop-off store exempt from licensure.

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 subsection 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.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9758;—Am. 1931, Act 127, Imd. Eff. May 19, 1931;—CL 1948, 445.401;—Am. 2006, Act 294, Imd. Eff. July 20, 2006;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

445.402 Second hand or junk dealer; license, issuance; petition by surrounding property owners; 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) A license shall not be issued to any person, firm, or corporation desiring to conduct a junk business in any residential community where 65% or more of the property owners within a radius of 1 city block of the contemplated junk business petition the issuing officer not to do so.

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(4) 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.

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

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9759;—CL 1948, 445.402;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

445.403 Definitions.

Sec. 3. As used in this act:

(a) "Automotive recycler" means a person who engages in business primarily for the purpose of selling retail salvage vehicle parts and secondarily for the purpose of selling retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal or a person employed as a salvage vehicle agent as that term is defined in section 56c of the Michigan vehicle code, 1949 PA 300, MCL 257.56c.

(b) "Industrial scrap" means materials that are a direct product or by-product of any form of manufacturing, shaping, or cutting process from a person, company, corporation, copartnership, or firm whose principal business is the manufacturing, shaping, or cutting of materials at a fixed place of business.

(c) "Internet drop-off store" means a person, corporation, or firm that contracts with other persons, corporations, or firms to offer its personal property or other valuable thing for sale, purchase, consignment, or trade through means of an internet website and meets the conditions described in section 1(3).

(d) "Local law enforcement agency" means the police agency of the city, village, or township, or if none, the county sheriff of the county in which the internet drop-off store conducts business.

(e) "Scrap processor" means a person, utilizing machinery and equipment and operating from a fixed location, whose principal business is the processing and manufacturing of iron, steel, nonferrous metals, paper, plastic, or glass, into prepared grades of products suitable for consumption by recycling mills, foundries, and other scrap processors.

(f) "Second hand dealer" or "junk dealer" means any person, corporation, or member or members of a copartnership or firm whose principal business is that of purchasing, selling, exchanging, storing, or receiving second hand articles of any kind, scrap metals, cast iron, old iron, old steel, tool steel, aluminum, copper, brass, lead pipe or tools, or lighting and plumbing fixtures. Second hand dealer or junk dealer does not include a scrap processor, an automotive recycler, or a junkyard that deals principally in industrial scrap and is licensed by a city, village, or county.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9760;—Am. 1939, Act 15, Eff. Sept. 29, 1939;—CL 1948, 445.403;—Am. 2006, Act 294, Imd. Eff. July 20, 2006;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

445.404 Second hand or junk dealer; sign; display; transactions, record.

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 keep a separate book or other record open to inspection by a member of a local law enforcement agency, 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, 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, and the day and hour when the purchase or exchange was made as well as the location from which the item was obtained, if applicable. Each entry shall be numbered consecutively.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9761;—CL 1948, 445.404;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

445.405 Second hand or junk dealer; articles purchased; retention; tagging; record; 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 such business is carried on, before 12 o'clock noon, a legible and correct copy written in the English language from the book or other record, containing a description of each article purchased or received during the preceding week, the hour and day when the purchase was made, and the description of the person from whom it was purchased. The statement shall be

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verified by the person subscribing his or her name thereto.

(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.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9762;—CL 1948, 445.405;—Am. 1961, Act 35, Eff. Sept. 8, 1961;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

445.406 Second hand or junk dealer; person without business place; retention of goods, record for police.

Sec. 6. If the purchaser or receiver, by exchange or otherwise, as described in section 3, is a peddler or goes about with a wagon to purchase or obtain by exchange or otherwise, any of such articles, and does not have a place of business in a building, he need not retain such articles for 15 days before selling them, provided on Monday of each week he files with the chief of police or chief police officer of the city or village in which he is located a report showing the place of business of the person to whom such sale was made; a copy of the record required by such section to be kept in a separate book of the articles purchased or received during the preceding week, including a description of such articles sold, to whom sold and his place of business.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9763;—CL 1948, 445.406.

445.407 Second hand or junk dealer; unlawful purchases.

Sec. 7. No person shall purchase or receive by sale, barter or exchange or otherwise, any article mentioned in this act from any person between the hours of 9 p.m. and 7 a.m., nor from any person who is at the time intoxicated or from an habitual drunkard or from any person known by said second hand dealer or junk dealer to be a thief or any associate of thieves or receiver of stolen property or from any person he has reason to suspect of being such.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9764;—CL 1948, 445.407.

445.408 Violation of act; penalty; 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 3 years or a fine of not more than $2,000.00, or both.

(3) A second hand or junk dealer who buys or sells stolen scrap metal that he or she has reason to believe was unlawfully removed from a utility pole, telecommunication company property, government property, or utility property or jobsite 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.

(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.

History: 1917, Act 350, Imd. Eff. May 10, 1917;—CL 1929, 9765;—CL 1948, 445.408;—Am. 2006, Act 675, Eff. Mar. 30, 2007.

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JUNK YARDS
Act 12 of 1929

AN ACT to give power to the township board of any township to license and regulate junk yards and places for the dismantling, wrecking and disposing of the junk and/or refuse material of automobiles; to prescribe rules, regulations and conditions for the operation of the same; to provide penalties for the operation of the same without a license and for the violation of any rule, regulation or condition.

History: 1929, Act 12, Eff. Aug. 28, 1929;—Am. 1935, Act 34, Imd. Eff. Apr. 27, 1935.

The People of the State of Michigan enact:

445.451 Junk yards; township licenses, fees, regulations, state of purchases.

Sec. 1. The township board of any township may, at any regular meeting, adopt a resolution providing for the licensing of junk yards and places for the dismantling, wrecking and disposing of the junk and/or refuse material of automobiles; may prescribe the amount of an annual license fee which shall not exceed 25 dollars, and prescribe the form of an application for such license, and adopt rules, regulations and conditions for the operation thereof, which in the discretion of said board will best protect the public health, interests and general welfare of their township, and shall specify the date when such resolution and the rules, regulations and conditions shall take effect: Provided, however, That the licensee shall, at least once each month, prepare and mail to the commissioner of the department of public safety at East Lansing, Michigan, a sworn statement of all purchases made by said licensee. The township board may in its discretion, for just cause, refuse to grant the license provided for in this act.

History: 1929, Act 12, Eff. Aug. 28, 1929;—CL 1929, 9766;—Am. 1935, Act 34, Imd. Eff. Apr. 27, 1935;—CL 1948, 445.451.

445.452 Junk yards; regulations, publication.

Sec. 2. Said resolution and the rules, regulations and conditions enacted thereunder shall within 5 days after their adoption and before the same shall take effect, be published by posting the same in 3 conspicuous places in the township, and an affidavit of said posting shall be filed in the office of the township clerk.

History: 1929, Act 12, Eff. Aug. 28, 1929;—CL 1929, 9767;—CL 1948, 445.452.

445.453 Violation of act; penalty.

Sec. 3. Any person, firm, association or corporation which shall operate such an establishment without a license, or shall violate any rule, regulation or condition, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding 100 dollars, or by imprisonment in the county jail not to exceed 90 days, or by both such fine and imprisonment in the discretion of the court.

History: 1929, Act 12, Eff. Aug. 28, 1929;—CL 1929, 9768;—CL 1948, 445.453.

PAWNBROKERS, SECONDHAND DEALERS, AND JUNK DEALERS
Act 231 of 1945

445.471-445.476 Repealed. 2006, Act 675, Eff. Mar. 30, 2007.

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THE PRECIOUS METAL AND GEM DEALER ACT
Act 95 of 1981

AN ACT to regulate the business of buying and receiving gold, silver, platinum, gems, jewelry, and other precious items; to provide powers to certain state and local officers and agencies with respect to such regulation; to provide for the registration of precious metal and gem dealers; to provide for civil damages; and to prescribe penalties.

History: 1981, Act 95, Eff. Sept. 11, 1981.

The People of the State of Michigan enact:

445.481 Short title.

Sec. 1. This act shall be known and may be cited as “the precious metal and gem dealer act”.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.482 Definitions.

Sec. 2. As used in this act:

(a) "Agent or employee" means a person who, for compensation or valuable consideration, is employed either directly or indirectly by a dealer.

(b) "Dealer" means any person, corporation, partnership, or association, which, in whole or in part, engages in the ordinary course of repeated and recurrent transactions of buying or receiving precious items from the public within this state.

(c) "Gold" means elemental gold having an atomic weight of 196.967 and the chemical element symbol of Au, whether found by itself or in combination with its alloys or any other metal.

(d) "Internet drop-off store" means a person, corporation, or firm that contracts with other persons, corporations, or firms to offer its precious items for sale, purchase, consignment, or trade through means of an internet website and meets the conditions described in section 3(3).

(e) "Jewelry" means an ornamental item made of a material that includes a precious gem.

(f) "Local governmental unit" means a city, village, township, or county.

(g) "Local police agency" means the police agency of the city, village, or township, or if none, the county sheriff of the county, in which the dealer or internet drop-off store conducts business.

(h) "Platinum" means elemental platinum having an atomic weight of 195.09 and the chemical element symbol of Pt, whether found by itself or in combination with its alloys or any other metal.

(i) "Precious gem" means a diamond, alexandrite, ruby, sapphire, opal, amethyst, emerald, aquamarine, morganite, garnet, jadeite, topaz, tourmaline, turquoise, or pearl.

(j) "Precious item" means jewelry, a precious gem, or an item containing gold, silver, or platinum. Precious item does not include the following:

(*i*) Coins, commemorative medals, and tokens struck by, or in behalf of, a government or private mint.

(*ii*) Bullion bars and discs of the type traded by banks and commodity exchanges.

(*iii*) Items at the time they are purchased directly from a dealer registered under this act, a manufacturer, or a wholesaler who purchased them directly from a manufacturer.

(*iv*) Industrial machinery or equipment.

(*v*) An item being returned to or exchanged at the dealer where the item was purchased and that is accompanied by a valid sales receipt.

(*vi*) An item which is received for alteration, redesign, or repair in a manner that does not substantially change its use and returned directly to the customer.

(*vii*) An item which does not have a jeweler's identifying mark or a serial mark and which the dealer purchases for less than $5.00.

(*viii*) Scrap metal which contains incidental traces of gold, silver, or platinum that are recoverable as a by-product.

(*ix*) Jewelry which a customer trades for other jewelry having a greater value, and which difference in value is paid by the customer.

(k) "Silver" means elemental silver having an atomic weight of 107.869 and the chemical element symbol of Ag, whether found by itself or in combination with its alloys or any other metal.

History: 1981, Act 95, Eff. Sept. 11, 1981;—Am. 1990, Act 34, Eff. May 1, 1990;—Am. 2006, Act 295, Imd. Eff. July 20, 2006.

445.483 Dealer; certificate of registration required; internet drop-off store exempt from registration; application; fee; disclosures; dealer, agent, or employee convicted of

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misdemeanor or felony; compliance with local ordinances; issuance and posting of certificate; notification of change in name or address.

Sec. 3. (1) A dealer shall not conduct business in a local governmental unit in this state unless the dealer has obtained a valid certificate of registration from that local governmental unit or local police agency.

(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 precious items for himself or herself, to obtain a registration under this act.

(3) An internet drop-off store in compliance with the following conditions is exempt from registration as a 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 police 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 police 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 police 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 police agency determines that the personal property or other valuable thing is stolen.

(4) A dealer shall apply to the local police agency for a certificate of registration, and pay a fee not to exceed $50.00 to cover the reasonable cost of processing and issuing the certificate of registration, by disclosing the following information:

(a) The name, address, and thumbprint of the applicant.

(b) The name and address under which the applicant does business.

(c) The name, address, and thumbprint of all agents or employees of the dealer. Within 24 hours after hiring a new employee, the dealer shall forward to the local police agency the name, address, and thumbprint of the new employee.

(5) A dealer or an agent or employee of a dealer who is convicted of a misdemeanor under this act or under section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535, shall not be permitted to operate as a dealer within this state for a period of 1 year after conviction.

(6) A dealer or an agent or employee of a dealer who is convicted of a felony under this act or under section 535 of the Michigan penal code, 1931 PA 328, MCL 750.535, shall not be permitted to operate as a dealer within this state for a period of 5 years after the conviction.

(7) This act shall not be construed to excuse a dealer from complying with the local zoning ordinance or any local ordinance regulating commercial activities. However, a local government may not pass an ordinance, or enforce an existing ordinance, that provides additional standards which must be met before the issuance of a certificate of registration.

(8) Upon receipt of the application described in subsection (4), the local police agency shall issue a certificate of registration in accordance with this section.

(9) Upon receipt of the certificate of registration from the local police agency, the dealer shall post it in a conspicuous place in the dealer's place of business.

(10) Not less than 10 days before a dealer changes the name or address under which the dealer does business, the dealer shall notify the local police agency of the change.

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History: 1981, Act 95, Eff. Sept. 11, 1981;—Am. 2006, Act 295, Imd. Eff. July 20, 2006.

445.484 Permanent record of each transaction; forms; copies; information required; numbering; sending copy of record of transaction form to police agency or sheriff's department; inspection; confidentiality; retention period; size of form; definition.

Sec. 4. (1) A dealer shall maintain a permanent record of each transaction, on record of transaction forms provided for in subsection (6), legibly written in ink in the English language. Each record of transaction form shall be filled out in quadruplicate by the dealer or agent or employee of the dealer. One copy of the form shall go to the appropriate police agency or sheriff's department pursuant to subsection (3); 1 copy shall go to the customer; and 1 copy shall be retained by the dealer pursuant to subsection (5). At the time a dealer receives or purchases a precious item, the dealer or the agent or employee of the dealer shall insure that the following information is recorded accurately on a record of transaction form:

(a) The dealer certificate of registration number.

(b) A general description of the precious item or precious items received or purchased, including the type of metal or precious gem. In the case of watches, the description shall contain the name of the maker and the number of both the works and the case. In the case of jewelry, all letters and marks inscribed on the jewelry shall be included in the description.

(c) The date of the transaction.

(d) The name of the person conducting the transaction.

(e) The name, date of birth, driver's license number or state of Michigan personal identification card number, and street and house number of the customer, together with a legible imprint of the right thumb of the customer, or if that is not possible, of the left thumb or a finger of the customer. However, the thumbprint or fingerprint shall only be required on the record of transaction form retained by the dealer. The thumbprint or fingerprint shall be made available to a police agency during the course of a police investigation involving a precious item or items described on the record of transaction. After a period of 1 year from the date of the record of transaction, if a police investigation concerning a precious item or items described on the record of transaction has not occurred, the dealer and any police agency or sheriff's department holding a copy of the record of transaction shall destroy, and not keep a permanent record of, the record of transaction. A dealer who goes out of business or changes his or her business address to another local jurisdiction either within or out of this state shall transmit the records of all transactions made by the dealer within 1 year before his or her closing or moving, to the local police agency.

(f) The price to be paid by the dealer for the precious item or precious items.

(g) The form of payment made to the customer; check, money order, bank draft, or cash. If the payment is by check, money order, or bank draft, the dealer shall indicate the number of the check, money order, or bank draft.

(h) The customer's signature.

(2) The record of each transaction shall be numbered consecutively, commencing with the number 1 and the calendar year.

(3) Within 48 hours after receiving or purchasing a precious item, the dealer shall send a copy of the record of transaction form to the local police agency and, if the record of transaction form indicates that the customer resides outside the jurisdiction of the local police agency, shall send a copy of the record of transaction form to the police agency of the city, village, or township in which the customer resides as set forth on the record of transaction, or, if that city, village, or township does not have a police agency, to the sheriff's department of the county in which the customer resides as set forth on the record of transaction. The record of transaction forms received by a police agency or sheriff's department shall not be open to inspection by the general public. Each police agency or sheriff's department holding record of transaction forms shall be responsible for insuring the confidentiality of the record of transaction forms and insuring that the record of transaction forms are used only for the purpose for which they were received.

(4) The record of transaction forms of a dealer and each precious item received shall be open to an inspection by the county prosecuting attorney, the local police agency, the police agency or sheriff's department of the local governmental unit in which the customer resides, and the Michigan state police, at all times during the ordinary business hours of the dealer. As a condition of doing business, a dealer is considered to have given consent to the inspection prescribed by this subsection. The record of transaction forms of a dealer shall not be open to inspection by the general public.

(5) Except as otherwise provided in this section, each record of a transaction shall be retained by the dealer for not less than 1 year after the transaction to which the record pertains.

(6) The form of the record of transaction shall have an 8-1/2 by 11 inch size and shall be as follows:

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"Record of Transaction
Dealer Certificate # _____ # _____
(Printed on (Transaction number
the form) printed on the form)
(1) Description of Property - _____
_____
_____
_____
_____
(2) _____, 19___ (3) _____
(Date) (Name of Dealer/Employee)
(4) _____, _____ 19__
(Name of Customer) (Date of Birth)
_____, _____
(Driver's license No./ (Street Address)
Mich. Personal ID Number)
_____ _____
(City & State) (Zip)
(5) _____ _____
(Price Paid) (County of Residence)
(6) _____
(Check no., bank draft
no., money order no., or
cash)
_____
(Name of police agency of city, village, or township
in which customer resides)
Thumbprint _____"
(Signature of Customer)

(7) As used in this section, "customer" means the person from whom the dealer or the agent or employee of the dealer receives or purchases a precious item.

History: 1981, Act 95, Eff. Sept. 11, 1981;—Am. 1990, Act 34, Eff. May 1, 1990.

445.485 Retaining precious item for 9 calendar days; alteration.

Sec. 5. A precious item received by a dealer shall be retained by the dealer for 9 calendar days after it was received, without any form of alteration other than that required to make an accurate appraisal of its value.

History: 1981, Act 95, Eff. Sept. 11, 1981;—Am. 1990, Act 34, Eff. May 1, 1990.

445.486 Prohibited conduct.

Sec. 6. A dealer or an agent or employee of a dealer shall not:

(a) Knowingly receive or purchase a precious item from any person who is less than 18 years of age or any person known by the dealer or agent or employee of the dealer to have been convicted of theft or receipt of stolen property within the preceding 5 years, whether the person is acting in his or her own behalf or as the agent of another.

(b) Knowingly receive or purchase a precious item from a person unless that person presents a valid driver's license or a valid state of Michigan personal identification card.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.487 Failure to make entry in records as misdemeanor or felony; penalty.

Sec. 7. (1) A dealer or an agent or employee of a dealer who knowingly fails to make an entry of any material matter in his or her records kept as required by section 4 is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of $1,000.00, or both.

(2) A dealer or an agent or employee of a dealer who knowingly violates subsection (1) a subsequent time is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of $5,000.00, or both.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.488 Violation of §§ 445.483(7) or (8) or 445.484(1)(e), (3), (4), or (5) as misdemeanor or felony; penalty.

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Sec. 8. (1) A dealer who knowingly violates section 3(7), 3(8), 4(1)(e), 4(3), 4(4), or 4(5) is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of $1,000.00, or both.

(2) A dealer who violates section 3(7), 3(8), 4(1)(e), 4(3), 4(4), or 4(5) a subsequent time is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of $5,000.00, or both.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.489 Conduct constituting felony; penalty.

Sec. 9. A dealer or an agent or employee of a dealer who does any of the following is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of $5,000.00, or both:

(a) Totally fails to record a transaction on a record of transaction form as required by section 4.

(b) Knowingly falsifies the records kept as required by section 4.

(c) Violates section 6.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.490 Violation of §§ 445.483(1) or 445.485 as felony; penalty.

Sec. 10. A dealer who violates section 3(1) or 5 is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of $5,000.00, or both.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.491 Action against dealer; grounds; damages, costs, and attorneys' fees.

Sec. 11. A person who has a precious item stolen, embezzled, or converted from him or her may bring an action for 3 times the amount of the damages, costs of suit, and reasonable attorneys' fees against any dealer who, by himself or herself or through his or her agent or employee, received or purchased the precious item knowing it was stolen, embezzled, or converted.

History: 1981, Act 95, Eff. Sept. 11, 1981.

445.492 Effective date.

Sec. 12. This act shall take effect 60 days after it is enacted into law.

History: 1981, Act 95, Eff. Sept. 11, 1981.

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USED CAR LOTS
Act 232 of 1937

AN ACT to authorize and require the township board of any township to license and regulate used car lots, as herein defined; to prescribe rules, regulations and conditions for the operation of the same; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

History: 1937, Act 232, Eff. Oct. 29, 1937.

The People of the State of Michigan enact:

445.501 Used car lot; definition.

Sec. 1. The term "used car lot" as used in this act shall be construed to mean any place where used motor vehicles are displayed and offered for sale in the open.

History: 1937, Act 232, Eff. Oct. 29, 1937;—CL 1948, 445.501.

445.502 Township used car lot; resolution; license, fee, application; rules; licensee, sworn statement, mailing.

Sec. 2. The township board of any township is hereby authorized and may adopt a resolution providing for the licensing of used car lots. In such regulations the township board may prescribe the amount of an annual license fee which shall not exceed 100 dollars. The township board shall prescribe the form of an application for such license. The township board is hereby authorized to adopt rules, regulations and conditions for the operation of used car lots, which in the discretion of said board will best protect the public health, interests and general welfare of the township, and the board shall specify the date when such resolution and the rules, regulations and conditions shall take effect. The licensee shall, at least once each month, prepare and mail to the commissioner of the Michigan state police at East Lansing, Michigan, and the secretary of state at Lansing, Michigan, a sworn statement of all purchases and sales made by the said licensee. The township board may in its discretion, for just cause, refuse to grant the license provided for in this act.

History: 1937, Act 232, Eff. Oct. 29, 1937;—CL 1948, 445.502.

Transfer of powers: See MCL 16.253.

445.503 Resolution, rules and regulations; posting, affidavit; township clerk, filing.

Sec. 3. Said resolution, and the rules, regulations and conditions enacted hereunder shall, within 5 days after their adoption and before the same shall take effect, be published by posting the same in 3 conspicuous places in the township and an affidavit of said posting shall be filed in the office of the township clerk.

History: 1937, Act 232, Eff. Oct. 29, 1937;—CL 1948, 445.503.

445.504 Violation of act; penalty.

Sec. 4. Any person, firm, association or corporation which shall operate a used car lot without a license, or shall violate any rule, regulation or condition, shall be deemed guilty of a misdemeanor, and shall be punished as provided by the laws of this state.

History: 1937, Act 232, Eff. Oct. 29, 1937;—CL 1948, 445.504.

MOTOR VEHICLE DEALERS, DISTRIBUTORS, AND MANUFACTURERS
Act 331 of 1978

445.521-445.534 Repealed. 1981, Act 118, Imd. Eff. July 19, 1981.

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WATERCRAFT AND OUTBOARD MOTOR MANUFACTURERS, DISTRIBUTORS, AND DEALERS
Act 88 of 1989

AN ACT to regulate watercraft and outboard motor manufacturers, distributors, dealers, and their representatives; and to regulate dealings between those manufacturers and distributors and their dealers.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

The People of the State of Michigan enact:

445.541 Meanings of words and phrases.

Sec. 1. For the purposes of this act, the words and phrases defined in sections 2 to 6 have the meanings ascribed to them in those sections, except where the context clearly indicates a different meaning.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.542 Definitions.

Sec. 2. (1) "Dealer agreement" means the agreement or contract in writing between a manufacturer or distributor and a new watercraft dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale of new watercraft or new outboard motors.

(2) "Designated successor" means 1 or more persons nominated by the new watercraft dealer, in a written document filed by the dealer with the manufacturer or distributor at the time the dealer agreement is executed, to succeed the dealer in the event of his or her death or incapacity.

(3) "Distributor" means a person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes a new watercraft or new outboard motor to a new watercraft dealer or who maintains a factory representative, resident or nonresident, or who controls a person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes a new watercraft or new outboard motor to a new watercraft dealer.

(4) "Manufacturer" means a person who manufactures or assembles new watercraft or new outboard motors, or a distributor, factory branch, or factory representative.

(5) "New watercraft dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of the manufacturer's or distributor's watercraft or outboard motors, who is engaged in the business of purchasing, selling, exchanging, or servicing new watercraft or new outboard motors, and who has an established place of business.

(6) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(7) "Proposed new watercraft dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed new watercraft dealer does not include a person whose dealer agreement is being renewed or continued.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.543 Dealer agreement and compliance required for sale or purchase of new watercraft or new outboard motor.

Sec. 3. A manufacturer or distributor shall not offer for sale to a new watercraft dealer, and a new or proposed new watercraft dealer shall not offer to purchase from a manufacturer, a new watercraft or a new outboard motor without first entering into a written dealer agreement and complying with all other applicable provisions of this act.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.544 Contents of dealer agreement.

Sec. 4. Each dealer agreement shall include, but is not limited to, all of the following:

(a) The territory or market area.

(b) The period of time covered by the dealer agreement.

(c) Performance and marketing standards.

(d) Notice provisions for termination, cancellation, or nonrenewal.

(e) Obligations in the preparation and delivery of the product and warranty service.

(f) Disposal obligations upon termination, cancellation, or nonrenewal of inventory, equipment, furnishings, special tools, and required signs acquired within 18 months of the date of termination, cancellation, or nonrenewal.

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(g) Dispute resolution procedures.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.545 Sale, transfer, or exchange of dealership; consent; criteria; prohibited conduct.

Sec. 5. (1) A manufacturer or distributor shall not unreasonably withhold consent to the sale, transfer, or exchange of a dealership to a person who meets the criteria set forth in the dealer agreement.

(2) Failure to respond within 60 days of receipt of a written request for the sale, transfer, or exchange of a dealership shall be considered consent to the request.

(3) Except for a material breach of the lease, a manufacturer or distributor shall not terminate, cancel, fail to renew, or discontinue a lease of a new watercraft dealer's place of business.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.546 Inability of designated successor to succeed new watercraft dealer.

Sec. 6. If a designated successor is not able to succeed the new watercraft dealer because of the designated successor's death or legal incapacity, the dealer, within 60 days after that death or incapacity, shall execute a new document nominating a designated successor.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

445.547 Designated successor of deceased or incapacitated new watercraft dealer; notice of intent; existing dealer agreement; personal and financial data; notice of refusal to approve succession.

Sec. 7. (1) A designated successor of a deceased or incapacitated new watercraft dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated successor gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within 60 days after the dealer's death or incapacity and agrees to be bound by all of the terms and conditions of the dealer agreement. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated successor for good cause or criteria agreed to in the existing dealer agreement.

(2) The manufacturer or distributor may request from a designated successor the personal and financial data necessary to determine whether the existing dealer agreement should be honored. Upon request, the designated successor shall supply the personal and financial data.

(3) Within 60 days after receiving the notice of the designated successor's intent to succeed the dealer in the ownership and operation of the dealership or within 60 days after receiving the requested personal and financial data, whichever last occurs, if a manufacturer or distributor believes that good cause or other criteria exist for refusing to honor the succession, the manufacturer or distributor may serve upon the designated successor notice of its refusal to approve the succession.

History: 1989, Act 88, Imd. Eff. June 20, 1989.

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SECONDHAND WATCHES
Act 200 of 1937

AN ACT to regulate the sale of second-hand watches; and to prescribe penalties for the violation of the provisions of this act.

History: 1937, Act 200, Eff. Oct. 29, 1937.

The People of the State of Michigan enact:

445.551 Definitions.

Sec. 1. For the purposes of this act:

"Consumer" shall mean an individual, firm, partnership, association or corporation who buys for own use or for the use of another but not for re-sale.

"Second-hand watch" means:

(1) A watch which, as a whole, the case thereof, or the movement thereof, has previously been sold to a consumer: Provided, however, That a watch which has been so sold, and is thereafter returned within 60 days from the date of such sale, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a second-hand watch for the purpose of this act, if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers (if any) on the case and the movement of the watch or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least 3 years from the date of the sale of the watch and to be open for inspection during all business hours by the prosecuting attorney of the county in which such person is engaged in business; or

(2) Any watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered.

History: 1937, Act 200, Eff. Oct. 29, 1937;—CL 1948, 445.551.

445.552 Sale; tag, size, wording.

Sec. 2. Any person, or agent or employe thereof, who sells a second-hand watch, shall affix and keep affixed to the same a tag at least 1 inch by 1 1/2 inches with the words "second-hand" legibly written or printed thereon in the English language. For the purposes of this act, "sell" shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

History: 1937, Act 200, Eff. Oct. 29, 1937;—CL 1948, 445.552.

445.553 Invoice; contents.

Sec. 3. Any person, or agent or employe thereof, who sells a second-hand watch, shall deliver to the vendee a written notice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the fact that the watch is second-hand, the name of the watch or its maker, and the serial number (if any), or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least 1 year from the date of the sale thereof and shall be open to inspection during all business hours by the prosecuting attorney of the county in which the vendor is engaged in business.

History: 1937, Act 200, Eff. Oct. 29, 1937;—CL 1948, 445.553.

445.554 Advertisement.

Sec. 4. Any person advertising second-hand watches for sale in any manner shall state clearly in such advertisement that the watches so advertised are second-hand watches. If such advertisement is printed or written, the fact that such watches are second-hand shall be printed or written in bold faced letters.

History: 1937, Act 200, Eff. Oct. 29, 1937;—CL 1948, 445.554.

445.555 Violation of act; penalty.

Sec. 5. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

History: 1937, Act 200, Eff. Oct. 29, 1937;—CL 1948, 445.555.

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BEVERAGE CONTAINERS
Initiated Law of 1976

A petition to initiate legislation to provide for the use of returnable containers for soft drinks, soda water, carbonated natural or mineral water, other nonalcoholic carbonated drink, and for beer, ale, or other malt drink of whatever alcoholic content, and for certain other beverage containers; to provide for the use of unredeemed bottle deposits; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

History: 1976, Initiated Law, Eff. Dec. 3, 1978;—Am. 1996, Act 384, Imd. Eff. July 24, 1996.

Compiler's note: This initiated law was submitted to and approved by the people at the general election held on November 2, 1976, and took effect on December 3, 1976, pursuant to Mich. Const., Art. 2, § 9. But see § 445.576.

The petition to initiate this legislation was headed by the following statement:

"A petition to initiate legislation to provide for the use of returnable containers for soft drinks, soda water, carbonated natural or mineral water or other non-alcoholic carbonated drink; beer, ale or other malt drink of whatever alcoholic content." See Newsome v Board of State Canvassers, 69 Mich App 725 (1976).

Popular name: Bottle Bill

The People of the State of Michigan enact:

445.571 Definitions.

Sec. 1. As used in this act:

(a) "Beverage" means a soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

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

(c) "Empty returnable container" means a beverage container which contains nothing except the residue of its original contents.

(d) "Returnable container" means a beverage container upon which a deposit of at least 10 cents has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, and for which a refund of at least 10 cents in cash is payable by every dealer or distributor in this state of that beverage in beverage containers, as further provided in section 2.

(e) "Nonreturnable container" means a beverage container upon which no deposit or a deposit of less than 10 cents has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, or for which no cash refund or a refund of less than 10 cents is payable by a dealer or distributor in this state of that beverage in beverage containers, as further provided in section 2.

(f) "Person" means an individual, partnership, corporation, association, or other legal entity.

(g) "Dealer" means a person who sells or offers for sale to consumers within this state a beverage in a beverage container, including an operator of a vending machine containing a beverage in a beverage container.

(h) "Operator of a vending machine" means equally its owner, the person who refills it, and the owner or lessee of the property upon which it is located.

(i) "Distributor" means a person who sells beverages in beverage containers to a dealer within this state, and includes a manufacturer who engages in such sales.

(j) "Manufacturer" means a person who bottles, cans, or otherwise places beverages in beverage containers for sale to distributors, dealers, or consumers.

(k) "Within this state" means within the exterior limits of the state of Michigan, and includes the territory within these limits owned by or ceded to the United States of America.

(*l*) "Commission" means the Michigan liquor control commission.

(m) "Sale or consumption area" means the premises within the property of the dealer or of the dealer's lessor where the sale is made, within which beverages in returnable containers may be consumed without payment of a deposit, and, upon removing a beverage container from which, the customer is required by the dealer to pay the deposit.

(n) "Nonrefillable container" means a returnable container which is not intended to be refilled for sale by a manufacturer.

(o) "Mixed wine drink" means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any 1

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or more of the following:

(*i*) Nonalcoholic beverages.

(*ii*) Flavoring.

(*iii*) Coloring materials.

(*iv*) Fruit juices.

(*v*) Fruit adjuncts.

(*vi*) Sugar.

(*vii*) Carbon dioxide.

(*viii*) Preservatives.

(p) "Mixed spirit drink" means a drink containing 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives; or any spirits based beverage, regardless of the percent of alcohol by volume, that is manufactured for sale in a metal container.

History: 1976, Initiated Law, Eff. Dec. 3, 1978;—Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982;—Am. 1982, Act 266, Imd. Eff. Oct. 5, 1982;—Am. 1986, Act 235, Eff. June 1, 1989;—Am. 1989, Act 93, Imd. Eff. June 20, 1989.

Popular name: Bottle Bill

445.572 Nonreturnable containers; prohibitions; means for return and refund; regional redemption centers; acceptance of containers and payment of refunds; indicating refund value and name of state on container; exception; metal containers with detachable parts prohibited; deposit previously refunded; refund upon reuse; maximum daily refund; agreement on deposit; refund by manufacturer.

Sec. 2. (1) A dealer within this state shall not sell, offer for sale, or give to a consumer a nonreturnable container or a beverage in a nonreturnable container.

(2) A dealer who regularly sells beverages for consumption off the dealer's premises shall provide on the premises, or within 100 yards of the premises on which the dealer sells or offers for sale a beverage in a returnable container, a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.

(3) Regional centers for the redemption of returnable containers may be established, in addition to but not as substitutes for, the means established for refunds of deposits prescribed in subsection (2).

(4) Except as provided in subsections (5) and (7), a dealer shall accept from a person an empty returnable container of any kind, size, and brand sold or offered for sale by that dealer and pay to that person its full refund value in cash.

(5) A dealer who does not require a deposit on a returnable container when the contents are consumed in the dealer's sale or consumption area is not required to pay a refund for accepting that empty container.

(6) Except as provided in subsection (7), a distributor shall accept from a dealer an empty returnable container of any kind, size, and brand sold or offered for sale by that distributor and pay to the dealer its full refund value in cash.

(7) Each beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container and the name of this state. A dealer or distributor may, but is not required to, refuse to accept from a person an empty returnable container which does not state on the container the refund value of the container and the name of this state. This subsection does not apply to a refillable container having a refund value of not less than 10 cents, having a brand name permanently marked on it, and having a securely affixed method of indicating that it is a returnable container.

(8) A dealer within this state shall not sell, offer for sale, or give to consumers a metal beverage container, any part of which becomes detached when opened.

(9) A person, dealer, distributor, or manufacturer shall not return an empty container to a dealer for a refund of the deposit if a dealer has already refunded the deposit on that returnable container. This subsection does not prohibit a dealer from refunding the deposit on an empty returnable container each time the returnable container is sanitized by the manufacturer and reused as a beverage container.

(10) A dealer may accept, but is not required to accept, from a person, empty returnable containers for a refund in excess of $25.00 on any given day.

(11) A manufacturer licensed by the commission shall not require a distributor licensed by the commission to pay a deposit to the manufacturer on a nonrefillable container. However, a manufacturer licensed by the commission and a distributor licensed by the commission may enter into an agreement providing that either or

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both may originate a deposit or any portion of a deposit on a nonrefillable container if the agreement is entered into freely and without coercion.

(12) A manufacturer shall refund the deposit paid on any container returned by a distributor for which a deposit has been paid by a distributor to the manufacturer.

(13) Subsections (4), (6), and (7) apply only to a returnable container that was originally sold in this state as a filled returnable container.

History: 1976, Initiated Law, Eff. Dec. 3, 1978;—Am. 1977, Act 270, Eff. Mar. 30, 1978;—Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982;—Am. 1982, Act 266, Imd. Eff. Oct. 5, 1982;—Am. 1986, Act 235, Eff. June 1, 1989;—Am. 1998, Act 473, Eff. Apr. 1, 1999.

Popular name: Bottle Bill

445.573 Certification of beverage containers.

Sec. 3. (1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the commission shall certify beverage containers which satisfy the requirements of this section.

(2) A beverage container shall be certified if:

(a) It is reusable as a beverage container by more than 1 manufacturer in the ordinary course of business.

(b) More than 1 manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(3) The commission shall not certify more than 1 beverage container of a particular manufacturer in each size classification. The commission shall by rule establish appropriate size classifications in accordance with the purposes set forth in subsection (1), each of which shall include a size range of at least 3 liquid ounces.

(4) A beverage container shall not be certified under this section:

(a) If by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name.

(b) If the commission finds that its use by more than 1 manufacturer is not of sufficient volume to promote the purposes set forth in subsection (1).

(5) Unless an application for certification under this section is denied by the commission within 60 days after the application is filed, the beverage container shall be deemed certified.

(6) The commission may at any time review certification of a beverage container. If, upon the review, after written notice and hearing afforded to the person who filed the original application for certification of the beverage container under this section, the commission determines that the beverage container is no longer qualified for certification, it shall withdraw certification. Withdrawal of certification shall be effective on a date specified by the commission, but not less than 30 days after written notice to the person who filed the original application for certification of the beverage container under this section, and to the manufacturer referred to in subsection (2).

History: 1976, Initiated Law, Eff. Dec. 3, 1978.

Popular name: Bottle Bill

Administrative rules: R 445.1 et seq. of the Michigan Administrative Code.

445.573a Report; filing; form and contents.

Sec. 3a. (1) Not later than March 1, 1991 and not later than March 1 of each year thereafter, a distributor or manufacturer who originates a deposit on a beverage container shall file a report with the department of treasury containing the information required by subsection (2).

(2) The report required to be filed pursuant to subsection (1) shall indicate for the period of January 1, 1990 to December 31, 1990, and for the time period of January 1 to December 31 of each year thereafter, the dollar value of both the total deposits collected by the distributor or manufacturer on beverage containers sold within this state and total refunds made upon beverage containers redeemed by the distributor or manufacturer within this state.

(3) The reports required to be filed pursuant to subsection (1) shall be similar to the following and contain the following information:

REPORT
DEPOSITS ORIGINATED AND REFUNDS GRANTED
ON BEVERAGE CONTAINERS
Reporting Period: _____
Company Name: _____
Company Address: _____

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Number and Street
_____
City, State, Zip
$_____ - $_____ = $_____
(Value of Deposits (Value of Refunds Made) (Difference)
Originated)
$_____ - $_____ = $_____
(Difference) (Overredemption Credit, (Amount Owed to
if Applicable) Department of
Treasury)
The undersigned states that the above information is true and
accurate.
_____
Signature - Owner or President
_____
Date

History: Add. 1989, Act 148, Eff. July 27, 1989.

Popular name: Bottle Bill

445.573b Unclaimed bottle deposits; audit, assessment, and collection by department of treasury; payment by underredeemer; overredemption credit; applying credit against prior years; definitions; report.

Sec. 3b. (1) The department of treasury may audit, assess, and collect the amount of money reflecting unclaimed bottle deposits owed to this state, and enforce the obligation to pay the amount of money reflecting unclaimed bottle deposits owed to this state, in the same manner as revenues and according to the provisions of 1941 PA 122, MCL 205.1 to 205.31.

(2) Not later than March 1, 1991 and not later than March 1 of each year thereafter, an underredeemer shall pay to the department of treasury that amount of money by which its annual total value of deposits exceeds its annual total value of refunds made on redeemed beverage containers, subject to the overredemption credit contained in this section.

(3) After March 1, 1991, an underredeemer who becomes an overredeemer in a subsequent year may credit the value of the overredemption in order to reduce the amount of money owed to the department of treasury under this section in 1 or more subsequent years as a result of that person again becoming an underredeemer. The value of the overredemption may be carried forward for not more than 3 years or until the credit granted in this section is completely depleted, whichever occurs first.

(4) A manufacturer who no longer originates deposits may carry the value of an overredemption back for prior years in order to utilize its credit, and reduce the amount of underredemption owed to the department of treasury under this section on a 1-time basis only. Utilization of this 1-time credit may be applied against underredemption amounts owed for reporting years commencing in 1990.

(5) As used in this section:

(a) “Overredeemer” means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state is less than the annual total value of refunds made upon beverage containers redeemed within this state.

(b) “Underredeemer” means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state exceeds annual total value of refunds made upon beverage containers redeemed within this state.

(6) In addition to the report prescribed in section 3a, if an underredeemer purchases empty returnable containers from an overredeemer, that purchase shall be reported by the underredeemer as a “refund made” and shall be reported by the overredeemer as a “deposit originated” in the report prescribed by section 3a. The report made by an underredeemer shall include the name and address of each overredeemer and the refund value of the empty returnable beverage containers purchased from each overredeemer. The report made by an overredeemer shall include the name and address of each underredeemer who purchased the returnable containers from that overredeemer and the refund value of the empty returnable beverage containers sold. The total consideration paid by an underredeemer to an overredeemer as authorized by this subsection shall equal the redemption value of the container.

(7) A purchase or sale made under subsection (6) during January of each year shall be included in the report for the previous calendar year only.

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History: Add. 1989, Act 148, Eff. July 27, 1989;—Am. 1996, Act 384, Imd. Eff. July 24, 1996;—Am. 1998, Act 473, Eff. Apr. 1, 1999.

Popular name: Bottle Bill

445.573c Bottle deposit fund; creation; administration; deposits; annual disbursement; report of information; rules.

Sec. 3c. (1) There is created in the department of treasury a bottle deposit fund which is a revolving fund administered by the department of treasury. The money in the bottle deposit fund shall not revert to the general fund.

(2) The amount paid to the department of treasury by underredeemers shall be deposited by the department of treasury in the bottle deposit fund created in subsection (1) for annual disbursement by the department of treasury in the following manner:

(a) Seventy-five percent to the cleanup and redevelopment trust fund created in section 3e.

(b) Twenty-five percent to dealers to be apportioned to each dealer on the basis of the number of empty returnable containers handled by a dealer as determined by the department of treasury.

(3) Not later than June 1 of each year, the department of treasury shall publish and make available to the public information related to section 3b(1) and send a report of that information to the legislature.

(4) The department of treasury may promulgate rules to implement sections 3a to 3d pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, if the department of treasury determines that rules are needed to properly implement and administer sections 3a to 3d.

History: Add. 1989, Act 148, Eff. July 27, 1989;—Am. 1996, Act 73, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 384, Imd. Eff. July 24, 1996.

Popular name: Bottle Bill

445.573d Unclaimed deposits.

Sec. 3d. Unclaimed deposits on returnable containers are considered to be the property of the person purchasing the returnable container and are not the property of the distributor or manufacturer who originated the deposit.

History: Add. 1989, Act 148, Eff. July 27, 1989.

Popular name: Bottle Bill

445.573e Cleanup and redevelopment fund.

Sec. 3e. (1) The cleanup and redevelopment trust fund is created within the state treasury.

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

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

(4) The state treasurer shall annually disburse the following amounts from the trust fund:

(a) For each of the state fiscal years 1996-1997, 1997-1998, and 1998-1999, up to $15,000,000.00 each year of money in the trust fund to the cleanup and redevelopment fund created in section 20108 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20108 of the Michigan Compiled Laws.

(b) In addition to the disbursements under subdivision (a), each state fiscal year, 80% of the revenues received by the trust fund from disbursements under section 3c to the cleanup and redevelopment fund and 10% to the community pollution prevention fund created in section 3f.

(5) All money in the trust fund that is not disbursed pursuant to subsection (4) shall remain in the trust fund until the trust fund reaches an accumulated principal of $200,000,000.00. After the trust fund reaches an accumulated principal of $200,000,000.00, interest and earnings of the trust fund only shall be expended, upon appropriation, for the purposes specified in section 20113(4) of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20113 of the Michigan Compiled Laws.

(6) As used in this section, “trust fund” means the cleanup and redevelopment trust fund created in subsection (1).

History: Add. 1996, Act 384, Imd. Eff. July 24, 1996.

Popular name: Bottle Bill

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445.573f Community pollution prevention fund.

Sec. 3f. (1) The community pollution prevention fund is created within the state treasury.

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

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

(4) The department of environmental quality shall expend interest and earnings of the community pollution prevention fund only, upon appropriation, for grants for the purpose of preventing pollution, with an emphasis on the prevention of groundwater contamination and resulting risks to the public health, ecological risks, and public and private cleanup costs. The department of environmental quality shall enter into contractual agreements with grant recipients, who shall include county governments, local health departments, municipalities, and regional planning agencies. Activities to be performed by grant recipients and program objectives and deliverables shall be specified in the contractual agreements. Grant recipients shall provide a financial match of not less than 25% nor more than 50%. Not more than $100,000.00 may be granted in any fiscal year to a single recipient. Eligible pollution prevention activities include all of the following:

(a) Drinking water wellhead protection, including the delineation of wellhead protection areas and implementation of wellhead protection plans pursuant to the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws.

(b) The review of pollution incident prevention plans prepared by, and the inspection of, facilities whose storage or handling of hazardous materials may pose a risk to the groundwater.

(c) The identification and plugging of abandoned wells other than oil and gas wells.

(d) Programs to educate the general public and businesses that use or handle hazardous materials on pollution prevention methods, technologies, and processes, with an emphasis on the direct reduction of toxic material releases or disposal at the source.

(5) The department of environmental quality shall annually prepare a report summarizing the grants made under this section, contractual commitments made and achieved, and a preliminary evaluation of the effectiveness of this section not later than September 30, 1997, and September 30 of each year thereafter, and shall provide a copy of this report to the chairs of the house and senate appropriations subcommittees for the department of environmental quality.

History: Add. 1996, Act 384, Imd. Eff. July 24, 1996.

Popular name: Bottle Bill

445.574 Violation; penalty; separate offense.

Sec. 4. Except as provided in sections 4a and 4b, a person, dealer, distributor, or manufacturer who violates this act is subject to a fine of not less than $100.00 or more than $1,000.00 and is liable for the costs of prosecution. Each day a violation occurs, a separate offense is committed.

History: 1976, Initiated Law, Eff. Dec. 3, 1978;—Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982;—Am. 1998, Act 473, Eff. Apr. 1, 1999.

Popular name: Bottle Bill

445.574a Prohibited return; violation; penalty.

Sec. 4a. (1) A person shall not return or attempt to return to a dealer for a refund 1 or more of the following:

(a) A beverage container that the person knows or should know was not purchased in this state as a filled returnable container.

(b) A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

(2) A person who violates subsection (1) is subject to 1 of the following:

(a) If the person returns 25 or more but not more than 100 nonreturnable containers, the person is guilty of a misdemeanor punishable by a fine of not more than $100.00.

(b) If the person returns more than 100 nonreturnable containers or violates subdivision (a) for a second or subsequent time, 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 both.

(c) A person found guilty under this subsection shall be ordered by the court to pay restitution equal to the amount of loss caused by the violation.

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History: Add. 1998, Act 473, Eff. Apr. 1, 1999.

Popular name: Bottle Bill

445.574b Posting notice on dealer's premises; failure to comply; penalty.

Sec. 4b. In that portion of the dealer's premises where returnable containers are redeemed, a dealer shall post a notice that says substantially the following: "A person who returns for refund an out-of-state nonreturnable container is subject to penalties of up to 93 days in jail and a fine of $500.00 and restitution.". A dealer who fails to comply with this section is subject to a fine of not more than $50.00.

History: Add. 1998, Act 473, Eff. Apr. 1, 1999.

Popular name: Bottle Bill

445.575 Repeal of § 445.191.

Sec. 5. Act No. 142 of the Public Acts of 1971, being section 445.191 of the Compiled Laws of 1970, is repealed.

History: 1976, Initiated Law, Eff. Dec. 3, 1978.

Popular name: Bottle Bill

445.576 Effective date.

Sec. 6. This act shall take effect two years after it becomes law.

History: 1976, Initiated Law, Eff. Dec. 3, 1978.

Popular name: Bottle Bill

DEGRADABLE PACKAGING FOR CONTAINERS
Act 145 of 1988

445.581-445.584 Repealed. 1994, Act 451, Eff. Mar. 30, 1995.

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ABANDONMENT OF BUSINESS
Act 144 of 1895

AN ACT to make it unlawful for any company or corporation to remove, abandon or discontinue any factory, work shop, machine shop, repair shop, office, agency or establishment, or the work, business or industry carried on therein from any village, city, town or place within this state, without repaying and restoring to such town, city, village or place any and all money, bonds, land and other property, with interest, which have been or may hereafter be given or granted as a consideration or inducement for the location, construction, operation, enlargement or maintenance at any such city, village, town or place, and to provide a remedy by injunction to restrain any such company or corporation from moving, abandoning or discontinuing any such factory, shop, etc., and to provide a penalty for so doing.

History: 1895, Act 144, Eff. Aug. 30, 1895.

The People of the State of Michigan enact:

445.601 Abandonment of business by municipally aided company without restoration of benefits and interest unlawful.

Sec. 1. That it shall be unlawful for any corporation or company doing business in this state, at any time, or for the officers, agents or others having control of the corporation or company, or of the business of property of such corporation or company, to move, abandon or discontinue, in any way, to any material extent, any factory, work shop, machine shop, repair shop, office, agency or other establishment, or the work or business carried on therein, from any city, town or other place within this state, without repaying and restoring any and all money, bonds, lands and other property, which have been, or shall hereafter be given or granted as a consideration or inducement for the location or construction, operation, enlargement or maintenance at any such city, town or place, of such factory, work shop, machine shop, repair shop, office, agency or establishment, or of the work or business carried on thereat; and such payment or restoration must include and be accompanied by the payment of lawful interest on such money, bonds, lands and other property, or upon the proceeds or reasonable profits thereof, for the full period that shall have elapsed between the date of the original gift and such final payment and restoration.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5447;—CL 1915, 7140;—CL 1929, 9831;—CL 1948, 445.601.

445.602 Abandonment of business; application of act; benefit to company officer or agent or to predecessor company.

Sec. 2. The provisions and penalties shall apply in all cases where the gift or grant was or shall be made by any city, town, company, person or persons, and they shall apply in all cases where the gift, grant, consideration or inducement, was made or paid to the corporation or company owning or operating such factory, work shop, machine shop, repair shop, office, agency, or establishment, and shall apply as well in all cases where such gift, grant, consideration or inducement was made or paid to any officer, agent, receiver or trustee of such corporation or company, or at any time in control of the property or business of the corporation or company; and the provisions and penalties of this act shall apply also if the corporation or company has succeeded to the rights, franchises, property or business of any corporation or company to which or the officers, agents, receivers or trustees of which company or corporation, or of its property, any such gift, grant, consideration or inducement was or shall have been made or paid.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5448;—CL 1915, 7141;—CL 1929, 9832;—CL 1948, 445.602.

445.603 Violation of act; misdemeanor.

Sec. 3. The violation of any of the provisions of this act by any corporation or company, or any shareholder, officer or agent of any corporation or company, or by any person or persons succeeding to or controlling or managing the property or business of such corporation or company, is hereby made a misdemeanor, to be punished by fines, penalties, forfeitures, injunctions and imprisonments, as provided in other sections of this act.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5449;—CL 1915, 7142;—CL 1929, 9833;—CL 1948, 445.603.

445.604 Violation of act; penalty.

Sec. 4. Any shareholder, officer, agent or other person violating any of the provisions of this act shall be punished by imprisonment for not more than 1 year, or by fine not exceeding 1,000 dollars, or by both such fine and imprisonment; any corporation or company violating any of the provisions of this act shall be punished by a fine of 1,000 dollars for each day that shall elapse between such act of removal, abandonment

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or discontinuation, and the repayment and restoration required by this act; and any such corporation or company found guilty of violating any of the provisions of this act shall also forfeit all rights or franchises derived from or enjoyed within this state, and shall be enjoined from transacting any business within the state.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5450;—CL 1915, 7143;—CL 1929, 9834;—CL 1948, 445.604.

445.605 Restoration of benefits; payment.

Sec. 5. The repayments and restorations required by this act shall be made to the city, town, company, person or persons, by which or from whom the gift, grant, consideration or inducement was made or paid, or to their successors, assigns or legal representatives.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5451;—CL 1915, 7144;—CL 1929, 9835;—CL 1948, 445.605.

445.606 Forfeitures and injunctions; rights of municipality upon failure of company.

Sec. 6. The forfeitures and injunctions provided for in this act may be decreed and enforced by any circuit court of any county in which any such corporation or company may do business, in a suit to be instituted for the purpose, in the name of the state of Michigan, by the prosecuting attorney of the county in which such suit is prosecuted: Provided, That in case of the suspension of any such business on account of the financial failure of any such company or corporation (other than railroad corporations), the person, city, village or town having so contributed any money, bonds, lands or other property shall become and be creditors of such company or corporation to the amount and value of such bonds, money or other property so contributed, and shall be treated and have all the rights of other creditors of such company or corporation; and such company or corporation, its shareholders, officers or agents, shall not be liable to the penalties herein provided: Provided further, That the provisions of this act shall not apply to any corporation or company having received any bonds, money, lands or other property as a consideration or inducement for the erection or construction, operation, enlargement or maintenance of any factory, work shop, machine shop, office, agency or establishment at any city, town or place for a specified length of time and having fully complied with all the conditions of the contract and agreement under which such bonds, money, lands or other property was given such company or corporation.

History: 1895, Act 144, Eff. Aug. 30, 1895;—CL 1897, 5452;—CL 1915, 7145;—CL 1929, 9836;—CL 1948, 445.606.

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OWNERSHIP RIGHTS IN DIES, MOLDS, AND FORMS
Act 155 of 1981

AN ACT to provide for ownership rights in dies, molds, and forms for use in the fabrication of plastic parts under certain conditions and to establish a lien on certain dies, molds, and forms.

History: 1981, Act 155, Eff. Jan. 1, 1982;—Am. 1986, Act 103, Imd. Eff. May 16, 1986.

The People of the State of Michigan enact:

445.611 Definitions.

Sec. 1. For purposes of this act:

(a) "Customer" means a person who causes a moldbuilder to fabricate, cast, or otherwise make a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts, or a person who causes a molder to use a die, mold, or form to manufacture, assemble, or fabricate a plastic product.

(b) "Moldbuilder" means a person who fabricates, casts, or otherwise makes, repairs, or modifies a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts.

(c) "Molder" means a person who uses a die, mold, or form to manufacture, assemble, or fabricate plastic parts.

(d) "Person" means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

History: 1981, Act 155, Eff. Jan. 1, 1982;—Am. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.612 Transfer of rights, title, and interest in die, mold, or form to molder; purpose.

Sec. 2. Unless otherwise agreed in writing, if a customer does not claim possession of a die, mold, or form from the molder within 3 years from the last use of the die, mold, or form, all rights, title, and interest in the die, mold, or form may, at the option of the molder, be transferred by operation of law to the molder for purposes of destroying the die, mold, or form.

History: 1981, Act 155, Eff. Jan. 1, 1982.

445.613 Notice of intention to terminate customer's rights, title, and interest in die, mold, or form.

Sec. 3. After the expiration of the 3-year period set forth in section 2, if a molder chooses to have all rights, title, and interest in a die, mold, or form transferred to the molder by operation of law, the molder shall send written notice by registered mail, return receipt requested, to an address designated in writing by the customer, or if not so designated, to the customer's last known address, indicating that the molder intends to terminate the customer's rights, title, and interest in the die, mold, or form, by having all rights, title, and interest in the die, mold, or form transferred to the molder by operation of law, pursuant to this act.

History: 1981, Act 155, Eff. Jan. 1, 1982.

445.614 Effect of customer's failure to claim possession of die, mold, or form or to make storage arrangements; construction of section.

Sec. 4. If a customer does not claim possession of the die, mold, or form within 120 days after the date the molder receives the return receipt of the notice sent pursuant to section 3, or does not make other arrangements with the molder for storage of the die, mold, or form within the time limit set forth in this section, all rights, title, and interest of the customer in the die, mold, or form shall be transferred by operation of law to the molder for purposes of destroying the die, mold, or form. This section shall not be construed to affect a right of a customer under federal patent or copyright law, or any state or federal law pertaining to unfair competition.

History: 1981, Act 155, Eff. Jan. 1, 1982.

445.615 Retroactive application of 3-year waiting period.

Sec. 5. The 3-year waiting period provided in section 2 shall apply retroactively in the case of a die, mold, or form in the possession of a molder on the effective date of this act.

History: 1981, Act 155, Eff. Jan. 1, 1982.

445.616 Applicability and construction of §§ 445.612 to 445.615.

Sec. 6. Sections 2 to 5 shall not apply if a molder retains title to and possession of a die, mold, or form. Sections 2 to 5 shall not be construed to grant a customer rights, title, or interest in a die, mold, or form.

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History: 1981, Act 155, Eff. Jan. 1, 1982;—Am. 1986, Act 103, Imd. Eff. May 16, 1986.

445.617 Effective date.

Sec. 7. This act shall take effect January 1, 1982.

History: 1981, Act 155, Eff. Jan. 1, 1982.

445.618 Molder's lien.

Sec. 8. A molder has a lien, dependent on possession, on any die, mold, or form in the molder's possession belonging to a customer for the amount due the molder from the customer for plastic fabrication work performed with the die, mold, or form. A molder may retain possession of the die, mold, or form until the amount due is paid.

History: Add. 1986, Act 103, Imd. Eff. May 16, 1986.

445.618a Enforcement of lien; notice.

Sec. 8a. Before enforcing a lien granted to a molder under section 8, notice in writing shall be given to the customer, whether delivered personally or sent by registered mail to the last known address of the customer. The notice shall state that a lien is claimed for the amount due for plastic fabrication work or for making or improving the die, mold, or form. The notice shall include a demand for payment.

History: Add. 1986, Act 103, Imd. Eff. May 16, 1986;—Am. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.618b Sale of die, mold, or form; conditions.

Sec. 8b. If the molder has not been paid the amount due within 90 days after the notice has been received by the customer provided in section 8a, the molder may sell the die, mold, or form at a public auction if both of the following occur:

(a) The die, mold, or form is still in the molder's possession.

(b) The molder complies with section 8c.

History: Add. 1986, Act 103, Imd. Eff. May 16, 1986.

445.618c Sale of die, mold, or form; notice; dispute.

Sec. 8c. (1) Before a molder may sell the die, mold, or form, the molder shall notify, by registered mail, return receipt requested, the customer and any person whose security interest is perfected by filing. The notice shall include the following information:

(a) The molder's intention to sell the die, mold, or form 60 days after the customer's receipt of the notice.

(b) A description of the die, mold, or form to be sold.

(c) The time and place of the sale.

(d) An itemized statement for the amount due.

(e) A statement that the product produced complies with the quality and quantity ordered.

(2) If there is not a return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the molder shall publish notice of the molder's intention to sell the die, mold, or form in a newspaper of general circulation in the place where the die, mold, or form is being held for sale by the molder and in the place of the customer's last known address. The notice shall include a description of the die, mold, or form and name of the customer.

(3) If a customer disagrees with the notice described in subsection (1), the customer shall notify the molder in writing by registered mail, return receipt requested, that the product produced did not meet the quality or quantity ordered. A molder who receives this notice shall not sell the die, mold, or form until the dispute is resolved.

History: Add. 1986, Act 103, Imd. Eff. May 16, 1986.

445.618d Sale for sum greater than amount of lien; disposition of proceeds; prohibited sales.

Sec. 8d. (1) If the sale is for a sum greater than the amount of the lien, the proceeds shall first be paid to the prior lienholder who has a perfected lien in an amount sufficient to extinguish that interest. Any excess shall next be paid to the molder who possesses a lien under this act in an amount sufficient to extinguish that interest. Any remainder shall then be paid to the customer.

(2) A sale shall not be made under this act if it would be in violation of any right of a customer under federal patent or copyright law.

History: Add. 1986, Act 103, Imd. Eff. May 16, 1986.

445.619 Moldbuilder; lien; requirements.

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Sec. 9. (1) A moldbuilder shall permanently record on every die, mold, or form that the moldbuilder fabricates, repairs, or modifies the moldbuilder's name, street address, city, and state.

(2) A moldbuilder shall file a financing statement in accordance with the requirements of section 9502 of the uniform commercial code, 1962 PA 174, MCL 440.9502.

(3) A moldbuilder has a lien on any die, mold, or form identified pursuant to subsection (1). The amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the die, mold, or form. The information that the moldbuilder is required to record on the die, mold, or form under subsection (1) and the financing statement required under subsection (2) shall constitute actual and constructive notice of the moldbuilder's lien on the die, mold, or form.

(4) The moldbuilder's lien attaches when actual or constructive notice is received. The moldbuilder retains the lien that attaches under this section even if the moldbuilder is not in physical possession of the die, mold, or form for which the lien is claimed.

(5) The lien remains valid until the first of the following events takes place:

(a) The moldbuilder is paid the amount owed by the customer or molder.

(b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.

(c) The financing statement is terminated.

(6) The priority of a lien created under this act on the same die, mold, or form shall be determined by the time the lien attaches. The first lien to attach shall have priority over liens that attach subsequent to the first lien.

History: Add. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.620 Moldbuilder; lien; enforcement; notice.

Sec. 10. To enforce a lien that attaches under section 9, the moldbuilder shall give notice in writing to the customer and the molder. The notice shall be given by hand delivery or certified mail, return receipt requested, to the last known address of the customer and to the last known address of the molder. The notice shall state that a lien is claimed, the amount that the moldbuilder claims it is owed for fabrication, repair, or modification of the die, mold, or form, and a demand for payment.

History: Add. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.620a Moldbuilder; right to possession of die, mold, or form.

Sec. 10a. Subject to section 10b, if the moldbuilder has not been paid the amount claimed in the notice required under section 10 within 90 days after the notice required under section 10 has been received by the customer and the molder, the moldbuilder has a right to possession of the die, mold, or form and may enforce the right to possession of the die, mold, or form by judgment, foreclosure, or any available judicial procedure. The moldbuilder may do 1 or more of the following:

(a) Take possession of the mold, die, or form. The moldbuilder may take possession without judicial process if this can be done without breach of the peace.

(b) Sell the die, mold, or form in a public auction.

History: Add. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.620b Sale of die, mold, or form; notice of intent.

Sec. 10b. (1) Before a moldbuilder may sell a die, mold, or form for which a lien is claimed and for which the required notice has been sent under section 10, the moldbuilder shall notify the customer, the molder, and all other persons that have a perfected security interest in the die, mold, or form under part 5 of article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9501 to 440.9527, by certified mail, return receipt requested, of all of the following:

(a) The moldbuilder's intention to sell the die, mold, or form 60 days after the receipt of the notice.

(b) A description of the die, mold, or form to be sold.

(c) The last known location of the die, mold, or form.

(d) The time and place of the sale.

(e) An itemized statement of the amount due.

(f) A statement that the die, mold, or form was accepted and the acceptance was not subsequently rejected.

(2) If there is no return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the moldbuilder shall publish notice of the moldbuilder's intention to sell the die, mold, or form in a newspaper of general circulation in the place where the die, mold, or form is last known to be located, in the place of the customer's last known address, and in the place of the molder's last known address. The published notice shall include a description of the die, mold, or form and the name of the

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customer and the molder.

(3) If a customer or molder against whom the lien is asserted disagrees that the die, mold, or form was accepted or that the acceptance was not subsequently rejected, the customer or molder shall notify the moldbuilder in writing by certified mail, return receipt requested, that the die, mold, or form was not accepted or that the acceptance was subsequently rejected. A moldbuilder who receives this notice shall not sell the die, mold, or form until the dispute is resolved.

History: Add. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

445.620c Sale; proceeds; prohibition.

Sec. 10c. (1) If the proceeds of the sale are greater than the amount of the lien, the proceeds shall first be paid to the moldbuilder in the amount necessary to satisfy the lien. All proceeds in excess of the lien shall be paid to the customer.

(2) A sale shall not be made or possession shall not be obtained under section 10a if it would be in violation of any right of a customer or molder under federal patent, bankruptcy, or copyright law.

History: Add. 2002, Act 17, Imd. Eff. Mar. 1, 2002.

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DIRECT MOLDING PROCESS
Act 362 of 1982

AN ACT to prohibit the copying of products by a certain manufacturing process; to prohibit the sale of such copies; and to provide for remedies.

History: 1982, Act 362, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

445.621 "Direct molding process" defined.

Sec. 1. As used in this act, "direct molding process" means any manufacturing process in which an original product is used as a pattern for making a mold which mold is used to manufacture copies of that product.

History: 1982, Act 362, Eff. Mar. 30, 1983.

445.622 Prohibited conduct.

Sec. 2. (1) A person shall not manufacture for the purpose of sale, by use of a direct molding process, a product manufactured by another person without the permission of that other person.

(2) A person shall not sell a product manufactured in violation of subsection (1).

History: 1982, Act 362, Eff. Mar. 30, 1983.

445.623 Civil action for injunctive relief; damages, attorney's fees, and costs.

Sec. 3. A person injured by a violation of this act may bring a civil action for injunctive relief. In addition, an injured person is entitled to actual damages caused by the violation, reasonable attorney's fees, and costs.

History: 1982, Act 362, Eff. Mar. 30, 1983.

445.624 Applicability of act.

Sec. 4. This act shall not apply to a product which is manufactured using a mold made before January 1, 1983.

History: 1982, Act 362, Eff. Mar. 30, 1983.

TRUSTS, MONOPOLIES, AND COMBINATIONS
Act 255 of 1899

445.701-445.712 Repealed. 1984, Act 274, Eff. Mar. 29, 1985.

CONTRACTS IN RESTRAINT OF TRADE
Act 229 of 1905

445.731-445.736 Repealed. 1984, Act 274, Eff. Mar. 29, 1985.

CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE
Act 329 of 1905

445.761-445.767 Repealed. 1984, Act 274, Eff. Mar. 29, 1985.

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MICHIGAN ANTITRUST REFORM ACT
Act 274 of 1984

AN ACT to prohibit contracts, combinations, and conspiracies in restraint of trade or commerce; to allow certain agreements not to compete; to prohibit monopolies and attempts to monopolize trade or commerce; to prescribe powers and duties of certain state officers and agencies; to provide remedies, fines, and penalties for violations of this act; to bar certain causes of action; and to repeal certain acts and parts of acts.

History: 1984, Act 274, Eff. Mar. 29, 1985;—Am. 1987, Act 243, Imd. Eff. Dec. 28, 1987.

The People of the State of Michigan enact:

445.771 Definitions.

Sec. 1. As used in this act:

(a) "Person" means an individual, corporation, business trust, partnership, association, or any other legal entity.

(b) "Relevant market" means the geographical area of actual or potential competition in a line of trade or commerce, all or any part of which is within this state.

(c) "Trade or commerce" means the conduct of a business for profit or not for profit producing or providing goods, commodities, property, or services and includes, without limitation, advertising, franchising, solicitation, offering for sale, lease, or distribution of a service or property, tangible or intangible, real, personal or mixed, or any other article of commerce.

(d) "Unit of government" means this state or an agency, instrumentality, political subdivision, or public corporation of this state, including but not limited to municipal corporations, quasi-municipal corporations, and authorities, and including their officials, employees, and agents when acting in their official capacity.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.772 Unlawful contract, combination, or conspiracy.

Sec. 2. A contract, combination, or conspiracy between 2 or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.773 Unlawful monopoly.

Sec. 3. The establishment, maintenance, or use of a monopoly, or any attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding or limiting competition or controlling, fixing, or maintaining prices, is unlawful.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.774 Labor as commodity or article of commerce; organizations for mutual help; acts or conduct of governmental unit; authorized transactions or conduct; unlawful transactions or conduct subject to regulatory scheme; transactions or conduct reducing cost of health care; enforcement of federal antitrust act.

Sec. 4. (1) Labor of a human being is not a commodity or an article of commerce.

(2) This act shall not be construed to forbid the existence and operation of any labor, agricultural, or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects.

(3) This act shall not be construed to prohibit, invalidate, or make unlawful any act or conduct of any unit of government, when the unit of government is acting in a subject matter area in which it is authorized by law to act, except for purposes of conducting an investigation and the obtaining of appropriate injunctive or other equitable relief, other than civil penalties, pursuant to section 7.

(4) This act shall not apply to a transaction or conduct specifically authorized under the laws of this state or the United States, or specifically authorized under laws, rules, regulations, or orders administered, promulgated, or issued by a regulatory agency, board, or officer acting under statutory authority of this state or the United States.

(5) A transaction or conduct made unlawful by this act shall not be construed to violate this act where it is the subject of a legislatively mandated pervasive regulatory scheme, including but not limited to, the insurance code of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, which confers exclusive jurisdiction on a regulatory board or officer to authorize, prohibit or regulate the transaction or conduct.

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(6) This act shall not apply to a transaction or conduct of an authorized health maintenance corporation, health insurer, medical care corporation, or health service corporation or health care corporation when the transaction or conduct is to reduce the cost of health care and is permitted by the commissioner. This subsection shall not affect the enforcement of the federal antitrust act by federal courts or federal agencies.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.774a Agreement or covenant protecting business interests of employer; applicability of section.

Sec. 4a. (1) An employer may obtain from an employee an agreement or covenant which protects an employer's reasonable competitive business interests and expressly prohibits an employee from engaging in employment or a line of business after termination of employment if the agreement or covenant is reasonable as to its duration, geographical area, and the type of employment or line of business. To the extent any such agreement or covenant is found to be unreasonable in any respect, a court may limit the agreement to render it reasonable in light of the circumstances in which it was made and specifically enforce the agreement as limited.

(2) This section shall apply to covenants and agreements which are entered into after March 29, 1985.

History: Add. 1987, Act 243, Imd. Eff. Dec. 28, 1987.

445.775 Venue.

Sec. 5. An action for violation of this act shall be brought in a circuit court where venue is proper without regard to the amount in controversy.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.776 Written demand by attorney general or prosecuting attorney; contents; noncompliance; action to enforce demand; service of notice and pleadings; orders; confidentiality; waiver.

Sec. 6. (1) If the attorney general or a prosecuting attorney has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may serve upon the person, before bringing any action in the circuit court, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

(a) Be served upon the person in the manner required for service of process in this state.

(b) Describe the nature of the conduct constituting the violation under investigation.

(c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.

(d) If demanded, contain a copy of the written interrogatories.

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or prosecuting attorney, with the permission of, or at the request of, the attorney general, on or before that time.

(f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object.

(g) Contain a copy of subsection (2).

(2) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (1), the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may file in the circuit court of the county in which the person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is presently occurring a violation of this act, and that the information sought or document or object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(3) Any procedure, testimony taken, or material produced shall be kept confidential by the attorney general or a prosecuting attorney before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

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History: 1984, Act 274, Eff. Mar. 29, 1985.

445.777 Action by attorney general or prosecuting attorney for injunctive or other equitable relief and civil penalties; assessment of penalty.

Sec. 7. The attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, may bring an action for appropriate injunctive or other equitable relief and civil penalties in the name of the state for a violation of this act. The court may assess for benefit of the state a civil penalty of not more than $50,000. 00 for each violation of this act.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.778 Action by state, political subdivision, public agency, or other person for injunctive or other equitable relief, actual damages, interest, costs and attorney's fees; effect of flagrant violation.

Sec. 8. (1) The state, a political subdivision, or any public agency threatened with injury or injured directly or indirectly in its business or property by a violation of this act may bring an action for appropriate injunctive or other equitable relief, actual damages sustained by reason of a violation of this act, and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees.

(2) Any other person threatened with injury or injured directly or indirectly in his or her business or property by a violation of this act may bring an action for appropriate injunctive or other equitable relief against immediate irreparable harm, actual damages sustained by reason of a violation of this act, and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of 3 times the actual damages sustained by reason of a violation of this act.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.779 Violation as misdemeanor; penalty; criminal prosecution.

Sec. 9. A person who engages in any violation of section 2 or 3 with the intent to accomplish a result prohibited by this act shall be guilty of a misdemeanor, punishable by imprisonment of not more than 2 years or a fine of not more than $10,000.00, or both, if an individual, or not more than $1,000,000.00 if a person other than an individual. A criminal prosecution shall not be brought under this section if a prior criminal prosecution has been initiated under the Sherman act arising out of the same transactions or occurrences.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.780 Final judgment or decree as prima facie evidence; application of collateral estoppel or issue preclusion.

Sec. 10. A final judgment or decree determining that a person has violated this act in an action brought by the state under section 7, 8(1), or 9 other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against the person in any other action against the person under section 8 as to all matters with respect to which the judgment or decree would be an estoppel between the parties to the action. This section does not affect the application of collateral estoppel or issue preclusion.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.781 Limitations.

Sec. 11. (1) An action under section 7 or 9 is barred if not commenced within 4 years after the claim of relief or cause of action accrues.

(2) An action to recover damages under section 8 is barred if not commenced within 4 years after the claim for relief or cause of action accrues, or within 1 year after the conclusion of any timely action brought by the state under section 7, 8(1), or 9 which is based in whole or in part on any matter complained of in the action for damages, whichever is later.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.782 Remedies cumulative.

Sec. 12. The remedies provided in this act are cumulative.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.783 Order requiring witness to give testimony or other information; immunity.

Sec. 13. If a witness has been or may be called to testify or provide other information at any proceeding relating to or under this act, the circuit court for the county in which the proceeding is or may be held may

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issue, upon application of the attorney general or a prosecuting attorney, with the permission of, or at the request of, the attorney general, which asserts that in his or her judgment the testimony or other information may be necessary to the public interest and the witness has or is likely to refuse to testify, an order requiring the witness to give testimony or provide other information which the witness refuses to give or provide on the basis of the privilege against self-incrimination, if the court provides in its order that the witness shall not be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, occurrence, matter, or thing to which the witness testifies or provides other information or evidence, documentary or otherwise, and that the testimony, information, or evidence shall not be used against the witness, in any criminal investigation, proceeding, or trial, except a prosecution for perjury for giving a false statement or for otherwise failing to comply with the order.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.784 Incorporation of provisions similar to uniform state antitrust act; application and construction; interpretations by federal court.

Sec. 14. (1) To the extent that this act incorporates provisions of or provisions similar to the uniform state antitrust act, this act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states that enact similar provisions.

(2) It is the intent of the legislature that in construing all sections of this act, the courts shall give due deference to interpretations given by the federal courts to comparable antitrust statutes, including, without limitation, the doctrine of per se violations and the rule of reason.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.785 Short title.

Sec. 15. This act shall be known and may be cited as the “Michigan antitrust reform act”.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.786 Severability.

Sec. 16. If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, such invalidity shall not affect the remaining portions of applications of this act which can be given effect without the invalid portion or application, provided the remaining portions are not determined by the court to be inoperable, and to this end this act is declared to be severable.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.787 Repeal of acts and parts of acts.

Sec. 17. The following acts and parts of acts are repealed:

(a) Act No. 255 of the Public Acts of 1899, being sections 445.701 to 445.712 of the Michigan Compiled Laws.

(b) Act No. 229 of the Public Acts of 1905, being sections 445.731 to 445.736 of the Michigan Compiled Laws.

(c) Act No. 329 of the Public Acts of 1905, being sections 445.761 to 445.767 of the Michigan Compiled Laws.

(d) Sections 553 to 555 and 557 to 560 of Act No. 328 of the Public Acts of 1931, being sections 750.553 to 750.555 and 750.557 to 750.560 of the Michigan Compiled Laws.

(e) Section 2155 of Act No. 236 of the Public Acts of 1961, being section 600.2155 of the Michigan Compiled Laws.

(f) Act No. 135 of the Public Acts of 1913, being sections 445.791 to 445.798 of the Michigan Compiled Laws.

(g) Act No. 282 of the Public Acts of 1937, being sections 445.171 to 445.184 of the Michigan Compiled Laws.

History: 1984, Act 274, Eff. Mar. 29, 1985.

445.788 Effect of repeals.

Sec. 18. The repeal of any statute or part thereof contained herein shall not have the effect to release, relinquish or affect any crime, penalty, fine, forfeiture or liability committed or incurred under such repealed statute or part thereof, and such repealed statute or part thereof shall remain in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of any penalty, fine, forfeiture or liability.

History: 1984, Act 274, Eff. Mar. 29, 1985.

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PETROLEUM PRODUCTS; UNFAIR DISCRIMINATION
Act 135 of 1913

445.791-445.798 Repealed. 1984, Act 274, Eff. Mar. 29, 1985.

ADVERTISING
Act 241 of 1966

445.801-445.809 Repealed. 1976, Act 449, Eff. Jan. 1, 1978.

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ADVERTISEMENTS
Act 98 of 1988

AN ACT to prescribe the contents of certain advertisements; and to provide penalties.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

The People of the State of Michigan enact:

445.811 Definitions.

Sec. 1. As used in this act:

(a) "Advertisement" means a representation that is intended to induce, or is likely to induce, directly or indirectly, the purchase of a consumer item, service, good, merchandise, commodity, or real property.

(b) "Mail order business" means a person that solicits an order for the sale of merchandise to be ordered by the buyer through the mails and is regulated by 16 C.F.R. part 435.

(c) "Person" means an individual, partnership, corporation, association, or other legal entity.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.812 Street address in advertisement.

Sec. 2. A person shall not knowingly give a street address for publication, dissemination, circulation, or placement before the public in an advertisement unless the street address that indicates where business is actually conducted by the owner, manager, or repairperson or, if applicable, where parts may be purchased is included within that advertisement.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.813 Applicability of act.

Sec. 3. (1) This act shall not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, circular, including those circulars prepared for national distribution, or outdoor advertising or of a radio or television station, who publishes, causes to be published, or takes part in the publication of an advertisement in violation of this act unless done with actual knowledge of the violation of this act.

(2) This act shall not apply to a mail order business.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.814 Injunction; assurance of discontinuance; notice of violation; penalty; rules.

Sec. 4. (1) The attorney general may maintain an action to enjoin a continuing violation of this act. If the court finds that the defendant is violating or has violated this act, the court shall enjoin that defendant from a continuance of the violation. The court may enjoin the defendant from a continuance of the violation, even if actual damages are not alleged or proved.

(2) The attorney general shall not institute an action for an injunction unless the attorney general has notified the defendant of the attorney general's intention to seek an injunction if the defendant does not stop violating or does not take positive action to stop violating this act. The attorney general shall serve notice upon the defendant at least 48 hours before the filing of the action. The court shall not issue an injunction if the defendant has stopped violating or has taken positive action to stop violating this act after receipt of the notice.

(3) The attorney general may accept an assurance of discontinuance of a practice alleged to be in violation of this act from the person engaging in, or who was engaged in, that practice. The person offering an assurance of discontinuance shall place the assurance in writing and shall file the assurance with the clerk of the circuit court of the county in which the alleged violator resides or has his or her principal place of business. The clerk of the circuit court shall not require a filing fee for the filing of an assurance. The person offering the assurance of discontinuance shall sign the assurance and shall include in the assurance a statement describing the acts or practices for which the assurance of discontinuance is being given and the specific sections of the law prohibiting those acts or practices. The assurance is not an admission of any fact or issue at law.

(4) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information the prosecuting attorney or law enforcement officer may have to the office of the attorney general.

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(5) A person who knowingly violates this act or the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than $200.00 for the first violation and not more than $1,000.00 for the second and any subsequent violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section.

(6) The attorney general may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to implement and administer sections 2 to 7.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.815 Individual or class action; damages; attorneys' fees.

Sec. 5. (1) Whether a person seeks damages or has an adequate remedy at law, a person may bring an action to do either of the following, or both, if the attorney general or prosecuting attorney fails to initiate action within 60 days after receiving notice of an alleged violation of this act:

(a) Obtain a declaratory judgment that a practice is in violation of this act.

(b) Enjoin by temporary or permanent injunction a person who is engaging or is about to engage in a practice in violation of this act.

(2) A person who suffers loss as a result of a violation of this act may bring an individual or a class action to recover actual damages or $50.00, whichever is greater, for each day on which violations of this act have been found together with reasonable attorneys' fees not to exceed $300.00 in an individual action.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.816 Investigation by prosecuting attorney; instituting and prosecuting action.

Sec. 6. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.817 Other cause of action; liberal construction; ordinance or other regulation.

Sec. 7. This act shall not affect any other cause of action that is available and shall be liberally construed to effectuate its purpose. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated under this act.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

445.818 Effective date.

Sec. 8. This act shall take effect for advertisements sold after June 1, 1988.

History: 1988, Act 98, Imd. Eff. Apr. 11, 1988.

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CONSUMERS COUNCIL
Act 277 of 1966

AN ACT to create a consumers council; to define its powers and duties; and to make an appropriation therefor.

History: 1966, Act 277, Eff. Mar. 10, 1967.

The People of the State of Michigan enact:

445.821 Legislative citizens committee on consumer affairs; members, appointment, terms.

Sec. 1. There is hereby established a committee to be officially known as the legislative citizens committee on consumer affairs and to consist of 3 members who are not members of the legislature. The members of this committee shall be appointed by the legislative council for 2-year terms to coincide with the terms of office of state representatives.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.822 Executive committee on consumer affairs; members.

Sec. 2. There is hereby established a committee of public officials to be officially known as the executive committee on consumer affairs and to consist of 3 members who shall be the secretary of state, the attorney general and the head of the department of commerce.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.823 Governor's citizens committee on consumer affairs; members, appointment, terms.

Sec. 3. There is hereby established a committee of 3 persons who are not public officers to be officially known as the governor's citizens committee on consumer affairs. The members of this committee shall be appointed by the governor for 2-year terms to coincide with the terms of office of state representatives.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.824 Special Michigan consumer's council; conducting business at public meeting; notice of meeting.

Sec. 4. (1) The legislative citizens' committee on consumer affairs, the executive committee on consumer affairs, and the governor's citizens committee on consumer affairs shall meet together regularly. The 3 separate committees meeting jointly shall be the special Michigan consumer's council.

(2) The business which the special Michigan consumer's council may perform shall be conducted at a public meeting of the council held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of a meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

History: 1966, Act 277, Eff. Mar. 10, 1967;—Am. 1980, Act 9, Imd. Eff. Feb. 14, 1980.

445.825 Legislative and governor's citizens committees; expenses, payment.

Sec. 5. Members of the legislative citizens committee on consumer affairs and members of the governor's citizens committee on consumers affairs shall be entitled to the necessary expenses incurred in connection with the business of the council not to exceed those allowed by the standard travel regulations as published by the department of administration.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.826 Duties of council.

Sec. 6. The council shall:

(a) Formulate and direct a program for the protection of individual consumers from harmful products and merchandise, false advertising and deceptive sales practices.

(b) Formulate and conduct a program of research and education to eliminate fraudulent commercial practices.

(c) Serve as a central coordinating agency and clearinghouse for activities and information concerning fraudulent commercial practices.

(d) Advise the governor as to all matters affecting the interests of the people of the state as consumers and recommend to both the governor and the legislature the enactment of legislation necessary to protect and promote the interests of the people as consumers.

(e) Advise the attorney general of any practice which requires investigations to determine if any law of the state is being violated.

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(f) Establish and maintain, as a service to the public, a toll free telephone line to its office which may be utilized by any person in the state. This telephone line shall be used to receive complaints from consumers and to refer consumers to the appropriate federal, state, local, or private agency which would handle the complaints.

History: 1966, Act 277, Eff. Mar. 10, 1967;—Am. 1978, Act 286, Imd. Eff. July 7, 1978.

445.827 Consumers council; powers.

Sec. 7. The council may:

(a) Appear before governmental commissions, departments and agencies to represent and be heard on behalf of consumers' interests, except when the legislature has specifically established a regulatory body or commission for the express purpose of regulating rates, charges and conditions of service, or otherwise protecting consumers' interests through the exercise of regulatory power vested in such body or commission.

(b) Cooperate and contract with agencies, public and private, to obtain statistical surveys, printing, economic information and other necessary information within the range of its budget, or do whatever else is incidental to the proper exercise of its powers.

(c) Hire a director and whatever additional staff is necessary to carry out its powers and duties, to be paid out of the appropriation to the council.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.828 Consumers council; general control of legislative council.

Sec. 8. The council shall come under the general control of the legislative council for purposes of budgeting, procurement and related management functions.

History: 1966, Act 277, Eff. Mar. 10, 1967.

445.829 Consumers council; appropriation.

Sec. 9. There is appropriated to the consumer council from the general fund of the state the sum of $10,000.00 for the fiscal year ending June 30, 1967.

History: 1966, Act 277, Eff. Mar. 10, 1967.

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JOE GAGNON APPLIANCE REPAIR ACT
Act 468 of 2002

AN ACT to regulate the servicing, repair, and maintenance of certain appliances and the compensation received by certain persons for those activities; to provide for certain disclosures and warranties regarding those activities; to limit certain representations by service dealers; and to provide for certain remedies.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

The People of the State of Michigan enact:

445.831 Short title.

Sec. 1. This act shall be known and may be cited as the “Joe Gagnon appliance repair act”.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.832 Definitions.

Sec. 2. As used in this act:

(a) “Appliance” means a refrigerator, dehumidifier, freezer, oven, range, microwave oven, washer, dryer, dishwasher, trash compactor, or window room air conditioner.

(b) “Customer” means a member of the general public who seeks the services of a service dealer for the repair, maintenance, or service of an appliance that he or she uses personally and not as part of a business or commercial enterprise.

(c) “Service dealer” means a person or other legal entity that, for compensation, engages or offers to engage in repairing, servicing, or maintaining an appliance. Service dealer does not include a contractor licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.833 Appliance repair; written estimate; fee; service call charge; combination of written estimate with final bill.

Sec. 3. (1) Except as otherwise provided in this section and before repairing, servicing, or performing maintenance on an appliance, a service dealer shall make a written estimate of the cost of the repair, service, or maintenance. The written estimate shall comply with subsection (2). The customer shall approve the estimate by signing the estimate, verbally approving the estimate via the telephone, or by any other equivalent method. If the customer approves the estimate by means of a telephone call or other equivalent method, the service dealer shall so indicate on the estimate and shall, if possible, obtain the customer's signature on the estimate at a later time. A service dealer shall not charge in excess of 110% of the amount noted in the written estimate unless the service dealer receives the verbal or written permission of the customer.

(2) A written estimate or attached documentation shall provide all of the following:

(a) The service dealer's name, mailing address, and telephone number. If the service dealer's mailing address is not a street address, then the street address of the service dealer.

(b) A description of the problem requiring service, repair, or maintenance or the maintenance procedure desired by the customer.

(c) Any charge for labor to be performed or parts to be installed, each stated separately. The estimate shall state the hourly rate, if any, or flat rate by which the labor charge is determined.

(d) The cost for removing the appliance from and returning the appliance to the customer's premises, if applicable.

(3) A service dealer may charge a fee, as indicated in the written estimate, for any labor performed in examining the appliance and diagnosing any problems. If the appliance would require dismantling as part of the diagnosis, the service dealer shall include in the written estimate of the cost of dismantling and reassembling the appliance and the cost, if any, of any parts that would be destroyed or rendered inoperable by the dismantling and reassembly of the appliance.

(4) This act does not prohibit a service dealer from charging for a service call.

(5) This act does not prohibit a service dealer from combining the written estimate with the final bill described in section 5 into the same document.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.834 Removed parts; return; retention.

Sec. 4. (1) Except as otherwise provided in subsection (2), the service dealer shall return all parts removed from the appliance to the customer unless the customer declines, in writing, to receive the removed part.

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(2) The service dealer may retain any part that has a core charge or exchange rate, contains hazardous material, or is returned to the manufacturer as required by the manufacturer's warranty if the service dealer provides to the customer, at the completion of the repair, service, or maintenance, a written statement on the final bill describing the reason for the retention of the part.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.835 Final bill.

Sec. 5. The final bill shall separately state in writing the following:

(a) The name and address of the service dealer as described in section 3(2)(a).

(b) Service call charges, if any.

(c) The labor charge.

(d) Parts charge, if any, including whether the parts were new or used and the actual part number and manufacturer.

(e) The warranty provided by the supplier of the part. If the service dealer has no knowledge of a supplier's or manufacturer's warranty or knows that no supplier's or manufacturer's warranty exists, he or she shall so state.

(f) The service dealer's labor warranty.

(g) Other charges, stated in detail.

(h) Sales tax.

(i) A statement that the customer, in order to enforce any warranty provided by this act, is required to notify the service dealer in writing, in person, or by telephone not later than the time period of the warranty for the part or labor.

(j) The right of a customer to bring an action under this act.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.836 Warranty.

Sec. 6. (1) A service dealer shall provide a warranty for not less than 30 days on the service dealer's labor regarding the repair of the appliance.

(2) Subsection (1) does not void, reduce, or supersede a warranty made by the manufacturer of the appliance and does not void any provisions of a service contract that covers the appliance.

(3) A warranty under subsection (1) requires the service dealer to correct, at no cost to the customer, any failure of the warranted parts if the customer notifies the service dealer in writing within the applicable warranty time period. A service dealer shall make a warranted correction in not more than 10 days after receipt of the written notice of the failure unless parts, after having been ordered in a timely manner, are not received by the service dealer. The service dealer shall make a written record of the ordering of those parts.

(4) A service dealer may impose a labor charge upon the receipt of a written notice of failure from a customer which is after the 30-day labor warranty described in subsection (1).

(5) A warranty issued under subsection (1) for service is extended by any period of time the service dealer has possession of the appliance for work related to the warranty.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

445.837 False statement; noncompliance; remedies; action pursuant to Michigan consumer protection act; other remedies.

Sec. 7. (1) A service dealer who makes a false statement of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of an appliance or who fails to substantially comply with the disclosure requirements of this act is subject to the remedies prescribed by subsection (2).

(2) A person may bring an action in a court of competent jurisdiction for actual damages resulting from a violation of this act in the amount of his or her actual damages or $250.00, whichever is greater, together with reasonable attorney fees. The court may award up to twice the amount of damages if it finds that the violation of this act was willful.

(3) This act does not prohibit the attorney general, a prosecuting attorney, or a person who has suffered a loss as a result of a violation of this act from bringing an action pursuant to the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922, for any act or omission relative to this act.

(4) The remedies under this section are cumulative and independent. The use of 1 remedy by a person or the department of attorney general shall not bar the use of other lawful remedies, including injunctive relief, by that person or the department of attorney general.

History: 2002, Act 468, Imd. Eff. June 21, 2002.

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RETAIL INSTALLMENT SALES ACT
Act 224 of 1966

AN ACT to regulate retail installment sales transactions, agreements, charges and disclosures; and to provide for the enforcement thereof and penalties for violations.

History: 1966, Act 224, Eff. Mar. 10, 1967.

The People of the State of Michigan enact:

445.851 Retail installment sales act; short title.

Sec. 1. This act shall be known and may be cited as the "retail installment sales act".

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.851a Truth in lending act; effect of compliance.

Sec. 1a. Compliance with the requirements of the truth in lending act, title I of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647, and 1661 to 1667e, is compliance with the disclosure provisions of sections 3(d) and 12(b).

History: Add. 1969, Act 31, Imd. Eff. July 10, 1969;—Am. 1993, Act 112, Eff. Sept. 19, 1993.

445.852 Definitions.

Sec. 2. As used in this act:

(a) "Goods" means all tangible chattels purchased primarily for personal, family, or household use and not for commercial, agricultural, or business use. Goods include chattels that are furnished or used for the modernization, rehabilitation, repair, alteration, improvement, or construction of real property so as to become a severable or nonseverable part of the property, if those chattels are not covered by the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws. Goods include merchandise certificates or coupons issued by a retail seller that are not redeemable in cash and that are to be used in their face amount instead of cash, in exchange for goods or services sold by the seller. Goods do not include a motor vehicle, money, a thing in action, intangible personal property, or their equivalent.

(b) "Services" means work, labor, advice, counseling, or instruction if purchased primarily for personal, family, or household use and not for commercial or business use. Services do not include any of the following:

(*i*) Work, labor, advice, counseling, or instruction for which the cost is fixed by law or subject to the approval or disapproval of the United States or this state.

(*ii*) Educational counseling or instruction provided by an accredited college or university or a primary or secondary school providing education required by the state.

(*iii*) Counseling or instruction of a kindergarten or nursery school.

(c) "Motor vehicle" means a self-propelled device by which a person or property may be transported upon a public highway. Motor vehicle does not include any of the following:

(*i*) A mobile home as that term is defined in section 719a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.719a of the Michigan Compiled Laws.

(*ii*) Tractors, motorcycles, trailers and semitrailers, power shovels, road machinery, agricultural machinery, and other machinery not designed primarily for highway transportation but which incidentally transports persons or property on a public highway. Motor vehicle also does not include devices that move upon or are guided by a track or travel through the air.

(d) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished from a retail seller.

(e) "Retail seller" or "seller" means a person regularly and principally engaged in the business of selling goods or services to retail buyers, but does not include the services of a professional person licensed by the state to perform legal or dental services or medical services as a medical doctor or a doctor of osteopathy.

(f) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement that provides for a time price differential and under which the buyer agrees to pay the unpaid balance in 1 or more installments. Retail installment transaction does not include a rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, Act No. 424 of the Public Acts of 1984, being section 445.952 of the Michigan Compiled Laws.

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(g) “Retail installment contract” means an instrument entered into in this state evidencing a secured or unsecured retail installment transaction, and includes a chattel mortgage, a security agreement, a conditional sale contract, or a bailment or lease contract if the bailment or lease contract requires the bailee or lessee to pay an amount equal to or greater than the value of the bailed or leased good, and additionally provides that the bailee or lessee shall become, for no additional consideration or for nominal consideration, the owner of the good upon full compliance with the bailment or lease contract. Retail installment contract does not include any of the following:

(*i*) A rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, Act No. 424 of the Public Acts of 1984.

(*ii*) A retail charge agreement.

(*iii*) An instrument evidencing a sale made pursuant to a retail charge agreement.

(h) “Retail charge agreement” means an instrument prescribing the terms of a secured or unsecured retail installment transaction that may be made under the instrument from time to time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

(i) “Time price differential” means the amount a buyer pays or is required to pay for the privilege of purchasing goods or services in installments over a period of time. Time price differential does not include the amount, if any, charged for insurance premiums, delinquency charges, attorney fees, court costs, or official fees, but does include all other charges included in a finance charge as that term is defined in section 106 of chapter I of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1605.

(j) “Cash sale price” means the price of a good or service a retail buyer would pay if he or she paid for the good or service in cash, and that is stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer pursuant to a retail charge agreement for that good or service. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations, or improvements.

(k) “Official fees” means fees prescribed by law and charged and paid by the seller or holder for filing, recording, or otherwise perfecting, releasing, or satisfying, a retained title, lien, or other security interest created by a retail installment transaction.

(*l*) “Time sale price” means the cash sale price of goods or services and the amount, if any, included for official fees, the time price differential, and, if a separate identified charge is made, for insurance.

(m) “Principal balance” means the cash sale price of the goods or services covered by a retail installment contract plus the amounts, if any, included in the cash sale price if a separate identified charge is made and stated in the contract for insurance or official fees, less the amount of the buyer's down payment in money or goods, or both.

(n) “Holder” means the retail seller of goods or services covered by a retail installment contract or retail charge agreement, or his or her assignee.

(o) “Person” means an individual, partnership, joint venture, corporation, association, or other legal entity.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1972, Act 191, Imd. Eff. June 21, 1972;—Am. 1987, Act 33, Imd. Eff. May 27, 1987;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

445.853 Retail installment contracts; requirements; retail buyer, representative; notice to buyer; size; contents; delivery of copy; nondelivery; provisions; terms.

Sec. 3. Each retail installment contract shall be in writing, dated, signed by the retail buyer or the authorized representative of the retail buyer and completed as to all essential provisions, except as otherwise provided in sections 5 and 6. No seller, agent of the seller, or employee of the seller, acting in the course of his employment shall act as the authorized representative of a retail buyer under this act.

(a) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type. The contract shall be designated “retail installment contract” and shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type:

“Notice to the buyer: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. You are entitled to a partial return of the finance charge if you prepay the balance.”

(b) The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, a buyer, to any extent that he has not received delivery of the goods or been furnished or rendered the services, shall have the right to rescind his contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any reliance by a holder other than the seller upon written acknowledgment by the buyer of delivery

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of a copy of the contract shall be based upon a statement in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer and shall require a separate signature of the buyer or the authorized representative of the buyer.

(c) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered.

(d) The retail installment contract shall contain the following items:

(1) The cash sale price of the goods or services.

(2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in.

(3) The difference between items (1) and (2).

(4) The itemized amounts of official fees.

(5) The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage.

(6) The principal balance.

(7) The amount of the time price differential for the full term of the contract.

(8) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6) and the amount set out under item (7).

(9) Except as otherwise provided in the next 2 sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay the time balance set forth in item (8). If installment payments other than the final payment are stated as a series of equal schedule amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

(10) The time sale price.

(11) If any installment, except the down payment, is more than double the average of all other installments, except the down payment, the following legend printed in at least 10-point bold type or typewritten: “This contract is not payable in installments of equal amounts”, followed, if there is but 1 larger installment, by: “An installment of $..... will be due on .....” or, if there is more than 1 larger installment, by: “larger installments will be due as follows: .....”, in the latter case inserting the amount of every larger installment and of its due date. The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(12) A notice to the buyer that upon his request the seller must provide or make available for examination by the buyer a statement or table showing how the partial refund of the time price charge is to be computed if any balance of the contract should be prepaid.

(13) A statement that the seller retains a security interest in the subject matter of the retail installment contract or retail charge agreement if he does so and a statement setting forth the nature and terms of the security interest retained, and the following legend printed in at least 10-point bold type or typewritten: “The seller retains a security interest in the subject matter of this agreement”.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.854 Retail installment contracts; single document not required; sales slip, account book, other written statements.

Sec. 4. A retail installment contract need not be contained in a single document. If the contract is contained in more than 1 document, 1 such document may be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case, the document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this subsection and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement at the option of the seller may constitute the memorandum required by section 11. No seller shall induce a buyer to become obligated at substantially the same time under more than 1 retail installment contract for the purpose of obtaining a higher time price differential than would apply to 1 contract.

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History: 1966, Act 224, Eff. Mar. 10, 1967.

445.855 Transactions negotiated and entered into by mail or telephone; applicable provisions of act; memorandum.

Sec. 5. (1) A retail installment transaction negotiated and entered into by mail or telephone without personal solicitations by a salesperson or other representative of the seller and based upon a catalog of the seller, or other printed solicitation which clearly sets forth the cash sale prices and other terms of sales to be made through the medium may be made as provided in this section. The provisions of this act with respect to a retail installment transaction shall be applicable to the sale, except that:

(a) The designation and notice provisions of sections 3(a) and 12(a) shall not be applicable to the retail installment contract or retail charge agreement.

(b) The retail installment contract or retail charge agreement, when completed by the buyer, need not contain the items required by section 3(d) or 12(a). When the retail installment contract or retail charge agreement is received from the retail buyer, the seller shall either prepare a written memorandum containing all of the information required by section 3(d) to be included in a retail installment transaction or shall deliver a copy of the retail charge agreement to the retail buyer as provided in section 12(a) prior to the due date of the first installment or payment payable under the contract or agreement.

(2) When the retail installment contract or retail charge agreement is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by sections 3(d) and 12(a) to be included in a retail installment transaction. Instead of delivering a copy of the contract or agreement to the retail buyer as provided in sections 3(b) and 12(a), the seller shall deliver to the buyer a copy of the memorandum prior to the due date of the first installment or payment payable under the contract or agreement.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1977, Act 127, Eff. Jan. 1, 1978.

445.856 Retail installment contracts; blank space; filling.

Sec. 6. A retail installment contract shall not be signed by any party thereto when it contains blank spaces of items which are essential provisions of the transaction, but if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirement of subsection (b) of section 3, of delivery of a copy of the contract shall be presumptive proof, or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof of such delivery and of compliance with this subsection and any other requirement relating to completion of the contract prior to execution thereof by the buyer, in any action or proceeding.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.857 Time price differential; limitation; computation; minimum time price differential.

Sec. 7. A retail installment contract may provide for, and the seller or holder may then charge, collect, and receive a time price differential that does not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. The time price differential may be computed on the basis of a full month for a fractional portion of a month in excess of 10 days. A minimum time price differential of not more than $10.00 may be charged, received, and collected on each contract, whether or not the contract is prepaid.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1978, Act 97, Imd. Eff. Apr. 5, 1978;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

445.858 Prepayment of unpaid balance; amount of refund credit.

Sec. 8. (1) Notwithstanding contrary provisions of a retail installment contract, a buyer may prepay in full the unpaid balance of the retail installment contract at any time before its final due date and, if the buyer does so, shall receive a refund credit for the prepayment, except as provided in section 23. The amount of the refund credit shall not be less than the amount that would be refunded using the actuarial method.

(2) A refund credit of less than $1.00 need not be made.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1978, Act 97, Imd. Eff. Apr. 5, 1978;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

445.859 Installment contract or retail charge agreement; delinquency and collection charge.

Sec. 9. The holder of an installment contract or retail charge agreement, or retail charge agreement including a contract subject to section 23, if it so provides, may collect a delinquency and collection charge on each installment in default for a period of more than 10 days. A delinquency and collection charge is not a liquidated damage.

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History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1993, Act 112, Eff. Sept. 19, 1993;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

445.860 Retail installment contracts; statement of dates, payments and unpaid balances; receipt.

Sec. 10. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer shall be given a written receipt for any payment when made in cash. The statement or receipt shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of $1.00 for each additional statement or receipt so supplied.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.861 Retail installment transactions; subsequent purchases; previous contracts; inclusion and consolidation; new schedule of installment payments.

Sec. 11. (a) If, in a retail installment transaction, a retail buyer purchases goods or services from a retail seller from whom he or she has previously purchased goods or services under 1 or more retail installment contracts, and the amounts under the previous contracts have not been fully paid, the subsequent purchases may be included in and consolidated with 1 or more of the previous contracts at the seller's option. Each subsequent purchase shall be a separate retail installment contract under this act, notwithstanding that the purchase may be included in and consolidated with 1 or more previous contracts. All the provisions of this act with respect to retail installment contracts apply to subsequent purchases except as otherwise provided in this section.

(b) In the event of consolidation, if the buyer does not execute a retail installment contract respecting each subsequent purchase as provided in this act, the seller may prepare a written memorandum of each subsequent purchase and the provisions of section 3 do not apply. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum, or otherwise, the memorandum shall contain items (1) to (8) of section 3(d) and the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any. The seller shall deliver to the buyer a copy of the memorandum prior to the due date of the first installment of the consolidated contract.

(c) When subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any 1 of the contracts included in the consolidation, the entire amount of all payments made prior to the subsequent purchases are considered to have been applied to the unpaid time balances of the previous purchases. Each payment after the subsequent purchase made on the consolidated contract shall be considered to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with subsequent purchases, at the seller's option, the subsequent payments may be considered to be allocated as an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. The amount of a down payment on the subsequent purchase shall be allocated in its entirety to the subsequent purchase. This subsection does not apply if the previous and subsequent purchases involve equipment, parts or other goods attached or affixed to goods previously purchased and not fully paid, or to services rendered by the seller at the buyer's request.

(d) (1) The holder of a retail installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable under the contract. A minimum charge of $1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at the rate permitted a regulated lender by the credit reform act, amounts to less than $1.00. The agreement may also provide for the buyer's payment of the additional cost to the holder of the contract of premiums for continuing in force until the end of the period of extension or deferral any insurance coverage provided for in the contract. The extension or deferral shall be confirmed in writing by the holder.

(2) The holder of a retail installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the refinance charge, but the refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to the refinancing, after the deduction of a refund or credit in an amount equal to that to which the buyer would have been entitled under section 8, if he or she had prepaid in full his or her obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. The refinance charge shall not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. The refinancing agreement shall set forth the amount of

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the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance, and the new schedule of installment payments.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

Compiler's note: In the second sentence of subdivision (c), "of the various purchases" evidently should read "that the various purchases."

445.862 Retail charge agreement; delivery of copy to buyer; acknowledgment; blank spaces; statement of time price differential; notice to buyer; periodic statement; computation of time price differential; adjustment of charges; attorney's fee and court costs.

Sec. 12. (a) A retail charge agreement shall be in writing and signed by the buyer or the authorized representative of the buyer. A retail charge agreement shall be considered signed and accepted by the buyer if after a request for a retail charge account the agreement or application for a retail charge account is in fact signed by the buyer or if the retail charge account is used by the buyer or by another person authorized by the buyer. The agreement may provide that it does not become effective until the seller or holder extends credit to the buyer, the buyer has received the disclosures required under the federal truth-in-lending act, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647, and 1661 to 1667e, and the buyer or a person authorized by the buyer uses the retail charge account. A copy of the agreement shall be delivered or mailed to the buyer before the date the first payment is due under the agreement. The acknowledgment by the buyer of delivery of a copy of the agreement shall be in a size equal to at least 10-point boldfaced type and shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer. An agreement shall not be signed by the buyer when it contains blank spaces for essential provisions of the transaction. The buyer's acknowledgment of delivery of a copy of an agreement in accordance with this section is presumptive proof in any action or proceeding of the delivery and that the agreement did not contain any blank spaces. A retail charge agreement shall state the maximum amount and rate of the time price differential to be charged and paid under the agreement. An agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point boldfaced type. "Notice to the buyer--Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign.".

(b) The buyer under the retail charge agreement shall promptly be supplied with a statement if at the end of a monthly period, which need not be a calendar month, or other regular period agreed upon in writing, there is an unpaid balance under the agreement. The statement shall contain all of the following:

(1) The unpaid balance under the retail charge agreement at the beginning and at the end of the period.

(2) The cash sale price of each purchase by the buyer during the period and, unless a sales slip or a memorandum of each purchase is attached to the statement, the purchase or posting date and a brief description or identification of each purchase.

(3) The payments made by the buyer and any other credits to the buyer during the period.

(4) The amount, if any, of any time price differential for that period.

(5) A statement that the buyer at any time may pay his or her total unpaid balance or any part of that balance.

(c) A retail charge agreement may provide for, and the seller or holder may then charge, collect, and receive, a time price differential for the privilege of paying in installments under the agreement at a rate not greater than the rate permitted a regulated lender by the credit reform act, Act No. 162 of the Public Acts of 1995, being sections 445.1851 to 445.1864 of the Michigan Compiled Laws. The time price differential under this subsection shall be computed on all amounts unpaid under the agreement from month to month, which need not be calendar months, or other regular periods. If the regular period is other than a monthly period, the time price differential may be computed proportionately. The time price differential may be computed for all unpaid balances within a range of $10.00 or less on the basis of the median amount within that range if as so computed the time price differential is applied to all unpaid balances within that range. A minimum time price differential of not more than 70 cents per month may be charged, received, and collected.

(d) The time price differential for purchases made under a retail charge agreement shall not be computed or imposed on an amount charged for the sale of goods or services until those goods or services have been delivered to the purchaser. If the time price differential is charged before delivery of the goods or services, the charges applied before the delivery date shall be adjusted upon the request of the purchaser in accordance with chapter 4 of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1666 to 1666j.

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(e) A retail charge agreement may also provide for the payment of an attorney's reasonable fee if it is referred for collection to an attorney not a salaried employee of the holder of the retail charge agreement or holder of an unpaid balance under the agreement, and for court costs.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1978, Act 120, Imd. Eff. Apr. 25, 1978;—Am. 1995, Act 167, Eff. Mar. 28, 1996;—Am. 1996, Act 431, Imd. Eff. Dec. 2, 1996.

445.862a Submission of invoice evidencing credit card sale.

Sec. 12a. If a retail seller elects to accept a credit card issued by a bank, the retail seller shall not submit an invoice evidencing such credit card sale to the card issuer until the goods or services purchased with the credit card have been delivered to the purchaser.

History: Add. 1978, Act 120, Imd. Eff. Apr. 25, 1978.

445.863 Retail installment contracts or charge agreements; insurance included in cost; requirements; minimum charges; refunds.

Sec. 13. (a) If the cost of insurance is included in the retail installment contract or the retail charge agreement and a separate charge is made to the buyer for the insurance:

(1) The contract or agreement shall state the nature, purpose and the amount of the insurance.

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller.

(3) The amount included for the insurance may not exceed the premiums chargeable in accordance with the rate fixed for the insurance by the insurer except where the amount is less than $1.00; and if the insurance is cancelled or terminated for any reason, any refund for unearned insurance premiums received by the seller or the holder, shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and any remaining balance of the unearned insurance premiums shall be refunded to the buyer. No credit or cash refund shall be required if the amount thereof is less than $1.00.

(b) If the insurance is to be procured by the seller or holder, within 45 days after delivery of the goods or furnishing of the services under the contract or agreement he shall deliver, mail, or cause to be delivered or mailed to the buyer at his address as specified in the contract or agreement, a notice that the insurance is procured, a copy of the policy or policies of insurance, or a certificate of the insurance so procured.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.864 Retail installment contracts or charge agreements; prohibited provisions; denial of application based on geographic location of residence prohibited; permissible conduct; exemption; contract for financial services not required; offer of combination of services not precluded by subsection (5).

Sec. 14. (1) Any of the following provisions contained in a retail installment contract or retail charge agreement are void and unenforceable:

(a) In the absence of the buyer's default in the performance of any of the buyer's obligations, the holder may accelerate the maturity of a part or all of the amount owing.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given.

(c) The seller or holder or other person acting on the seller's or holder's behalf is given authority to enter upon the buyer's premises unlawfully or to commit a breach of the peace in the repossession of goods.

(d) The buyer waives a right of action against the seller or holder or other person acting on the seller's or holder's behalf, for an illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods.

(e) The buyer executes a power of attorney appointing the seller or holder, or other person acting on the seller's or holder's behalf, as the buyer's agent in collection of payments under the contract or agreement or in the repossession of goods.

(f) The buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

(g) An agreement by the buyer to pay liquidated damages.

(2) A seller shall not deny an application for a retail installment contract or retail charge agreement based in whole or in part upon the geographic location of the residence of the applicant.

(3) Subsection (2) shall not preclude a seller from doing any of the following:

(a) Limiting its retail installment contracts or retail charge agreements to residents of this state or to all counties contiguous to the county in which the business is located, and including that county of location.

(b) Denying an application for a retail installment contract or retail charge agreement, if the store at the location to which the application is made gives equal consideration to all applicants who reside in that store's trade area, with respect to the geographic location of the residence of each applicant. As used in this

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subdivision, “trade area” includes the places of residence of all regular customers of the store.

(c) Denying an application for a retail installment contract or retail charge agreement if the seller maintains a consistent credit evaluation system within at least 2 contiguous counties, and that system does not take into consideration the geographic location of the residence of an applicant in determining whether the applicant should be granted or denied a retail installment contract or retail charge agreement, and the seller does not grant a retail installment contract or retail charge agreement in any other county.

(d) Researching payment and repayment rates in selected geographic locations for the purpose of detecting causative factors.

(4) Subsection (2) shall not apply to a seller whose annual gross receipts for sales of goods and services within this state are less than $2,000,000.00.

(5) A retail seller shall not require as a condition of approving the retail installment transaction that the retail buyer contract for 1 or more financial services offered by the retail seller or a particular service provider designated by the retail seller.

(6) Subsection (5) does not preclude a retail seller from offering a combination of 2 or more services under prices or terms that are more favorable to the retail buyer than the prices or terms the services would be offered separately.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1980, Act 272, Eff. Mar. 31, 1981;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

Compiler's note: In subsection (6), “the prices or terms the services would be offered” evidently should read “the prices or terms at which the services would be offered.”

445.865 Purchase or acquisition of retail installment contract or retail charge agreement by assignee; terms, conditions, and price; evidence of obligation; validity of written assignment; notice; payment to last known holder; claims and defenses; sales to which section applicable.

Sec. 15. Notwithstanding the provisions of any other law and notwithstanding any agreement to the contrary:

(a) An assignee may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from a seller on the terms and conditions and for a price as may be mutually agreed upon, but a person shall not take a negotiable instrument, other than a currently dated check or draft, as evidence of the obligation of the buyer in a retail installment transaction.

(b) Filing of the assignment, notice to the buyer of the assignment, and any requirement that the seller be deprived of dominion over payments upon a retail installment contract or retail charge agreement, or over the goods if returned to or repossessed by the seller, shall not be necessary to the validity of a written assignment of the retail installment contract or retail charge agreement or any outstanding balance under either as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the seller.

(c) Unless the assignee gives written notice of the assignment to the buyer by certified mail, or personally serves the buyer with the notice, a payment made by the buyer to the holder last known to the buyer shall be binding upon all subsequent holders.

(d) A holder of a retail installment contract of the buyer is subject to all the claims and defenses of the buyer arising out of the retail installment transaction, but the buyer's recovery shall not exceed the amount paid to the holder thereunder.

(e) This section shall apply only to sales made pursuant to a retail installment contract.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1972, Act 161, Eff. Jan. 1, 1973;—Am. 1980, Act 76, Imd. Eff. Apr. 3, 1980.

445.865a Contracts, agreements, or other transactions considered made in state; offer or agreement to sell in state; acceptance or offer to buy in state.

Sec. 15a. (1) For the purposes of this act, a retail installment contract, retail charge agreement, or other retail installment transaction shall be considered to have been made in this state if either the seller offers or agrees in this state to sell to a buyer who is a resident of this state or the buyer accepts or makes the offer in this state to buy, regardless of the specified situs of the contract or agreement.

(2) An oral or written solicitation or communication to sell originating outside this state, but forwarded to, directed to, and received in this state by a buyer who is a resident of this state shall be considered an offer or agreement to sell in this state.

(3) An oral or written solicitation or communication to buy originating within this state from a buyer who is a resident of this state, but forwarded, directed to, and received by a retail seller outside of this state shall be considered an acceptance or offer to buy in this state.

History: Add. 1977, Act 127, Eff. Jan. 1, 1978.

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445.866 Waiver of act as to buyers' protection prohibited.

Sec. 16. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid waiver of any of the provisions of this act or of any remedies granted to the buyer by law.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.867 Violation of act; misdemeanor.

Sec. 17. Any person who wilfully and intentionally violates any provisions of this act shall be guilty of a misdemeanor.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.868 Violation of act; effect as to recovery rights of seller.

Sec. 18. Any seller who enters into any contract or agreement which does not comply with the provisions of this act or who violates any provision of this act except as a result of accidental or bona fide error is barred from the recovery of any time price differential, any official fees, delinquency or collection charge, attorney fees or court costs and the buyer shall be entitled to recover his reasonable attorney fees and court costs from the seller or his assigns.

Notwithstanding the provisions of this section, nothing in this act shall bar recovery upon a contract which is lawful where executed and is executed outside this state by a buyer who was not at the time of such execution a bona fide resident of this state, except that no seller or seller's assign may in any such action recover a greater total time price differential upon any retail installment contract or charge agreement than the maximum lawful rate which would have been permitted by this act if such contract or agreement had been executed in this state.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.869 Violation of act; actions; penalties.

Sec. 19. (1) The attorney general, the prosecuting attorney for the county where an alleged violation occurred, or a borrower may bring an action against a retail seller to do 1 or more of the following:

(a) Obtain a declaratory judgment that a method, act, or practice of a retail seller is a violation of this act.

(b) Enjoin a retail seller who is engaging or about to engage in a method, act, or practice that is a violation of this act.

(c) Recover $1,000.00 and actual damages if the alleged violation of this act was committed by a retail seller for a noncredit card arrangement or $1,500.00 and actual damages if the alleged violation involved any other credit arrangements.

(d) Recover reasonable attorney fees and the costs in connection with bringing an action under this act if the retail seller is found to have violated this act.

(e) In an action brought by the attorney general or a county prosecutor, recover a civil fine of not more than $10,000.00 if the retail seller is found to have willfully and knowingly violated this act and $20,000.00 if the retail seller is found to have persistently violated this act.

(2) Except for a violation described in section 12, a retail seller who violates this act in the extension of credit to a borrower or buyer shall not recover any interest or other charges in connection with the extension of credit. The borrower or buyer may recover reasonable attorney fees and court costs for enforcing this subsection or in defending against a cause of action brought by a retail seller who has violated this act.

(3) The attorney general or a borrower may bring a class action on behalf of persons injured by a violation of this act.

History: 1966, Act 224, Eff. Mar. 10, 1967;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

445.870 Violation of act; assurance of discontinuance; acceptance by attorney general, approval of circuit court.

Sec. 20. The attorney general, or with his consent a prosecuting attorney, may accept an assurance of discontinuance of any act or practice deemed in violation of this act from any person engaging in, or who has engaged in, such act or practice. Any assurance shall be in writing and filed with and subject to the approval of the circuit court of the county in which the alleged violator resides or has his principal place of business. Failure to perform the terms of any assurance constitutes prima facie proof of a violation of this act for the purpose of securing any injunction as provided in section 19 and for the purpose of section 18. After commencement of any action by a prosecuting attorney, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney.

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History: 1966, Act 224, Eff. Mar. 10, 1967.

445.871 Violation of order of circuit court; civil penalty.

Sec. 21. Any person who violates any order of a circuit court issued pursuant to this act shall forfeit and pay a civil penalty of not more than $1,000.00. For the purpose of this section, the court issuing any order shall retain jurisdiction for a period of 10 years and the cause shall be continued for that period, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties during the period of any order.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.871a Compliance with federal truth-in-lending act; violation as unintentional and bona fide error; burden of proof.

Sec. 21a. A retail seller is not liable for a violation of this act if the retail seller has fully complied with the federal truth-in-lending act, Public Law 90-321, 15 U.S.C. 1601 to 1607e and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error. A violation of this act resulting from a bona fide error may be corrected in the same manner as provided for in section 130(b) of the truth-in-lending act, 15 U.S.C. 1640(b). The burden of proving that a violation was an unintentional and bona fide error is on the retail seller.

History: Add. 1995, Act 167, Eff. Mar. 28, 1996.

445.872 Effect of act as to prior contracts.

Sec. 22. The provisions of this act shall not invalidate or make unlawful or unenforceable, retail installment contracts or retail charge agreements executed prior to the effective date of this act, or liabilities at any time incurred thereunder.

History: 1966, Act 224, Eff. Mar. 10, 1967.

445.873 Time price differential consisting of interest on amount of unpaid principal balance of contract; modifications.

Sec. 23. Instead of a time price differential computed on the original principal balance, the seller may charge from time to time a time price differential consisting of interest on the amount of the unpaid principal balance of the contract. The transaction is subject to this act as modified by the following provisions:

(a) The number and amount of installment payments required to be stated under section 3 may be estimated for purposes of this section assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(b) The holder of the contract has the option of deferring interest charges that accrue due to installment payments being received later than the periodic installment due date. The deferred interest charge shall be computed on the basis of additional interest charges accruing for late installment payments and appropriate interest reductions for installment payments made before the due date. On contracts providing for equal monthly installments, if the final installment is more than 105% of a previous installment as a result of the deferred interest charges, the installment buyer shall be given the option to pay the deferred interest charges not less than 25 days after the date the last installment payment is due.

(c) If the entire principal balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original time price differential shall be canceled and the provisions of section 8 respecting a refund credit shall not be applicable.

History: Add. 1978, Act 97, Imd. Eff. Apr. 5, 1978;—Am. 1995, Act 167, Eff. Mar. 28, 1996.

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MICHIGAN CONSUMER PROTECTION ACT
Act 331 of 1976

AN ACT to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties.

History: 1976, Act 331, Eff. Apr. 1, 1977.

The People of the State of Michigan enact:

445.901 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan consumer protection act”.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.902 Definitions.

Sec. 2. (1) As used in this act:

(a) Subject to subsection (2), "business opportunity" means the sale or lease of any products, equipment, supplies, or services for the purpose of enabling the purchaser to start a business, and in which the seller represents 1 or more of the following:

(*i*) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, or currency operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller.

(*ii*) That the seller may, in the ordinary course of business, purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using whole or in part the supplies, services, or chattels sold to the purchaser.

(*iii*) The seller guarantees that the purchaser will derive income from the business opportunity that exceeds the price paid for the business opportunity; or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity. As used in this subparagraph, "guarantee" means a written or oral representation that would cause a reasonable person in the purchaser's position to believe that income is assured.

(*iv*) That the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity that exceeds the price paid for the business opportunity. This subparagraph does not apply to the sale of a marketing program made in conjunction with the licensing of a federally registered trademark or a federally registered service mark, or to the sale of a business opportunity for which the purchaser pays less than $500.00 in total for the business opportunity from anytime before the date of sale to anytime within 6 months after the date of sale.

(b) "Documentary material" includes the original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(c) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(d) "Person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

(e) "Recording group" means a vocal or instrumental group that meets both of the following:

(*i*) At least 1 of the members of the group has previously released a commercial sound recording under the group's name.

(*ii*) At least 1 of the members of the group has a legal right to use the group's name, by virtue of use or operation under the group's name without abandoning the name of or affiliation with the group.

(f) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

(g) "Trade or commerce" means the conduct of a business providing goods, property, or service primarily for personal, family, or household purposes and includes the advertising, solicitation, offering for sale or rent, sale, lease, or distribution of a service or property, tangible or intangible, real, personal, or mixed, or any other article, or a business opportunity. "Trade or commerce" does not include the purchase or sale of a franchise, but does include pyramid and chain promotions, as "franchise", "pyramid", and "chain promotions" are defined in the franchise investment law, 1974 PA 269, MCL 445.1501 to 445.1546.

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(2) As used in this act, "business opportunity" does not include a sale of a franchise as defined in section 2 of the franchise investment law, 1974 PA 269, MCL 445.1502, or the sale of an ongoing business if the owner of the business sells and intends to sell only that single business opportunity.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1984, Act 91, Imd. Eff. Apr. 20, 1984;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006.

445.903 Unfair, unconscionable, or deceptive methods, acts, or practices in conduct of trade or commerce; rules; applicability of subsection (1)(hh).

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(b) Using deceptive representations or deceptive designations of geographic origin in connection with goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(d) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

(h) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods or services.

(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.

(j) Representing that a part, replacement, or repair service is needed when it is not.

(k) Representing to a party to whom goods or services are supplied that the goods or services are being supplied in response to a request made by or on behalf of the party, when they are not.

(*l*) Misrepresenting that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or services are not purchased, when in fact the defect does not exist or the product or services would not remove the danger.

(m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(r) Representing that a consumer will receive goods or services "free" or "without charge", or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in

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but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

(w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

(dd) Subject to subdivision (ee), representations by the manufacturer of a product or package that the product or package is 1 or more of the following:

(*i*) Except as provided in subparagraph (*ii*), recycled, recyclable, degradable, or is of a certain recycled content, in violation of guides for the use of environmental marketing claims, 16 CFR part 260.

(*ii*) For container holding devices regulated under part 163 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.16301 to 324.16303, representations by a manufacturer that the container holding device is degradable contrary to the definition provided in that act.

(ee) Representing that a product or package is degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as appropriate.

(ff) Offering a consumer a prize if in order to claim the prize the consumer is required to submit to a sales presentation, unless a written disclosure is given to the consumer at the time the consumer is notified of the prize and the written disclosure meets all of the following requirements:

(*i*) Is written or printed in a bold type that is not smaller than 10-point.

(*ii*) Fully describes the prize, including its cash value, won by the consumer.

(*iii*) Contains all the terms and conditions for claiming the prize, including a statement that the consumer is required to submit to a sales presentation.

(*iv*) Fully describes the product, real estate, investment, service, membership, or other item that is or will be offered for sale, including the price of the least expensive item and the most expensive item.

(gg) Violating 1971 PA 227, MCL 445.111 to 445.117, in connection with a home solicitation sale or telephone solicitation, including, but not limited to, having an independent courier service or other third party pick up a consumer's payment on a home solicitation sale during the period the consumer is entitled to cancel the sale.

(hh) Except as provided in subsection (3), requiring a consumer to disclose his or her social security number as a condition to selling or leasing goods or providing a service to the consumer, unless any of the following apply:

(*i*) The selling, leasing, providing, terms of payment, or transaction includes an application for or an extension of credit to the consumer.

(*ii*) The disclosure is required or authorized by applicable state or federal statute, rule, or regulation.

(*iii*) The disclosure is requested by a person to obtain a consumer report for a permissible purpose described in section 604 of the fair credit reporting act, 15 USC 1681b.

(*iv*) The disclosure is requested by a landlord, lessor, or property manager to obtain a background check of the individual in conjunction with the rent or leasing of real property.

(*v*) The disclosure is requested from an individual to effect, administer or enforce a specific telephonic or other electronic consumer transaction that is not made in person but is requested or authorized by the individual if it is to be used solely to confirm the identity of the individual through a fraud prevention service database. The consumer good or service shall still be provided to the consumer upon verification of his or her

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identity if he or she refuses to provide his or her social security number but provides other information or documentation that can be used by the person to verify his or her identity. The person may inform the consumer that verification through other means than use of the social security number may cause a delay in providing the service or good to the consumer.

(ii) If a credit card or debit card is used for payment in a consumer transaction, issuing or delivering a receipt to the consumer that displays any part of the expiration date of the card or more than the last 4 digits of the consumer's account number. This subdivision does not apply if the only receipt issued in a consumer transaction is a credit card or debit card receipt on which the account number or expiration date is handwritten, mechanically imprinted, or photocopied. This subdivision applies to any consumer transaction that occurs on or after March 1, 2005, except that if a credit or debit card receipt is printed in a consumer transaction by an electronic device, this subdivision applies to any consumer transaction that occurs using that device only after 1 of the following dates, as applicable:

(*i*) If the electronic device is placed in service after March 1, 2005, July 1, 2005 or the date the device is placed in service, whichever is later.

(*ii*) If the electronic device is in service on or before March 1, 2005, July 1, 2006.

(jj) Violating section 11 of the identity theft protection act, 2004 PA 452, MCL 445.71.

(kk) Advertising or conducting a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group. This subdivision does not apply if any of the following are met:

(*i*) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office.

(*ii*) At least 1 member of the performing group was a member of the recording group and has a legal right to use the recording group's name, by virtue of use or operation under the recording group's name without having abandoned the name or affiliation with the recording group.

(*iii*) The live musical performance or production is identified in all advertising and promotion as a salute or tribute and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public.

(*iv*) The advertising does not relate to a live musical performance or production taking place in this state.

(*v*) The performance or production is expressly authorized by the recording group.

(2) The attorney general may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules shall not create an additional unfair trade practice not already enumerated by this section. However, to assure national uniformity, rules shall not be promulgated to implement subsection (1)(dd) or (ee).

(3) Subsection (1)(hh) does not apply to either of the following:

(a) Providing a service related to the administration of health-related or dental-related benefits or services to patients, including provider contracting or credentialing. This subdivision is intended to limit the application of subsection (1)(hh) and is not intended to imply that this act would otherwise apply to health-related or dental-related benefits.

(b) An employer providing benefits or services to an employee.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1994, Act 46, Imd. Eff. Mar. 23, 1994;—Am. 1994, Act 276, Imd. Eff. July 11, 1994;—Am. 1996, Act 74, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 226, Imd. Eff. May 30, 1996;—Am. 2000, Act 14, Imd. Eff. Mar. 8, 2000;—Am. 2002, Act 613, Imd. Eff. Dec. 20, 2002;—2004, Act 455, Eff. Mar. 1, 2005;—2004, Act 459, Eff. Mar. 1, 2005;—2004, Act 461, Eff. Mar. 1, 2005;—2004, Act 462, Eff. Mar. 1, 2005;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006.

Administrative rules: R 14.51 et seq. of the Michigan Administrative Code.

445.903a Home appliance; contents of service contract.

Sec. 3a. (1) As used in this section, “company” means a person engaged in trade or commerce who provides a service contract to consumers.

(2) A service contract for the repair or maintenance of a home appliance shall contain the following provision:

If performance of the service contract is interrupted because of a strike or work stoppage at the company's place of business, the effective period of the service contract shall be extended for the period of the strike or work stoppage.

History: Add. 1979, Act 150, Imd. Eff. Nov. 19, 1979.

445.903b Failure of seller to file notice unlawful; form and contents of notice; notice of change in information; reference to § 445.903 includes reference to this section.

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Sec. 3b. (1) In addition to the unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce defined in section 3, it is unlawful for the seller of a business opportunity to fail to file a notice with the attorney general on or before the first sale of a business opportunity in this state if the purchaser pays more than $500.00 in total for the business opportunity from anytime before the date of sale to anytime within 6 months after the date of sale. The form of the notice shall be prescribed by the attorney general. The attorney general shall not require the seller to file more than the following information:

(a) The name of the seller.

(b) The name under which the seller intends to do business.

(c) The seller's principal business address.

(d) If the seller is not domiciled in Michigan, a consent to service of process.

(2) The seller shall immediately notify the attorney general of a change in the information contained in the notice.

(3) A reference to section 3 in this act shall be considered to include a reference to this section.

History: Add. 1984, Act 91, Imd. Eff. Apr. 20, 1984.

445.903c Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3c. (1) A person shall not advertise or cause to be listed in a telephone directory an assumed or fictitious business name that intentionally misrepresents where the business is actually located or operating or falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone service directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

History: Add. 1998, Act 229, Eff. Mar. 23, 1999.

445.903d Advertising or listing in telephone directory; misrepresenting name or location prohibited; violation; penalty; applicability to telephone service provider, publisher, or distributor.

Sec. 3d. (1) A person shall not advertise or cause to be listed in a telephone directory a business address or local telephone number that intentionally misrepresents where the business is actually located or operating or that falsely states that the business is located or operating in the same area covered by the telephone directory.

(2) A person who violates this section is subject to a civil fine of not less than $100.00 or more than $10,000.00.

(3) This section does not apply to a telephone service provider or to the publisher or distributor of a telephone directory, unless the conduct proscribed in this section is on behalf of that telephone service provider or that publisher or distributor.

(4) This section does not apply to a telephone service provider that lists, in a telephone directory, a local telephone number that forwards calls to provide customer service.

History: Add. 1998, Act 230, Eff. Mar. 23, 1999.

445.904 Exemptions; burden of proof.

Sec. 4. (1) This act does not apply to either of the following:

(a) A transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

(2) Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by any of the following:

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.10cc.

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(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) The credit union act.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993;—Am. 2000, Act 432, Eff. Mar. 28, 2001;—Am. 2003, Act 216, Imd. Eff. Dec. 2, 2003.

445.905 Action to restrain defendant by temporary or permanent injunction; venue; costs; civil penalty; notice to defendant; notice to attorney general; violation of injunction, order, decree, or judgment; civil fine; retention of jurisdiction, continuation of cause, and petition for recovery of civil fine.

Sec. 5. (1) If the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice that is unlawful pursuant to section 3, and gives notice in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil fine of not more than $25,000.00. For a violation of section 3(1)(kk), each performance or production is a separate violation.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the attorney general shall notify the person of his or her intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, if the person is a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(3) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information he or she may have to the office of the attorney general.

(4) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil fine of not more than $5,000.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil fine as provided by this section.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 2006, Act 508, Imd. Eff. Dec. 29, 2006.

445.906 Assurance of discontinuance of method, act, or practice.

Sec. 6. (1) When the attorney general has authority to institute an action or proceeding pursuant to section 5, he may accept an assurance of discontinuance of a method, act, or practice which is alleged to be unlawful under section 3 from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not constitute an admission of guilt nor be introduced in any other proceeding. The assurance may include a stipulation for any or all of the following:

(a) The voluntary payment by the person for the costs of investigation.

(b) An amount to be held in escrow pending the outcome of an action.

(c) An amount for restitution to an aggrieved person.

(2) An assurance of discontinuance shall be in writing and may be filed with the circuit court of Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

History: 1976, Act 331, Eff. Apr. 1, 1977.

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445.907 Subpoena; notice; confidentiality; penalty.

Sec. 7. (1) Upon the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after an ex parte hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. A person served with a subpoena may be accompanied by counsel when he appears before the attorney general. The subpoena may compel a person to produce the books, records, papers, documents, or things relating to an alleged violation of this act. During the examination of documentary material under the subpoena, the court may require a person having knowledge of the documentary material or the matters contained therein to attend and give testimony under oath or acknowledgment with respect to the documentary material.

(2) The subpoena shall include the notice of the time, place, and cause of the taking of testimony, the examination, or the attendance and shall allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that period of time.

(3) Service of the notice shall be in the manner provided and subject to the provisions that apply to service of process upon a defendant in a civil action commenced in the circuit court.

(4) The notice shall:

(a) State the time and place for the taking of testimony or the examination and the name and address of the person to be examined. If the name is not known, the notice shall give a general description sufficient to identify the person or the particular class or group to which the person belongs.

(b) State a reference to this section and the general subject matter under investigation.

(c) Describe the documentary material to be produced with reasonable specificity so as to indicate fairly the material demanded.

(d) Prescribe a return date within which the documentary material shall be produced.

(e) Identify the members of the attorney general's staff to whom the documentary material shall be made available for inspection and copying.

(5) At any time before the date specified in the notice, upon motion for good cause shown, the court may extend the reporting date or modify or set aside the notice and subpoena.

(6) The documentary material or other information obtained by the attorney general pursuant to an investigation under this section shall be confidential records of the office of the attorney general and shall not be available for public inspection or copying or divulged to any person except as provided in this section. The attorney general may disclose documentary material or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought pursuant to this act.

(c) Upon order of the court, to a party in a private action brought pursuant to this act.

(7) A person who discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be fined not more than $2,500.00, or imprisoned for not more than 1 year, or both.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.908 Compliance with notice; conduct requiring assessment of civil penalty; petition for order to enforce compliance; violation of final order; injunction.

Sec. 8. (1) A person upon whom a notice is served pursuant to section 7 shall comply with the terms of the notice unless otherwise provided by the order of the circuit court.

(2) A person who does any of the following shall be assessed a civil penalty of not more than $5,000.00.

(a) Knowingly without good cause fails to appear when served with a notice.

(b) Knowingly avoids, evades, or prevents compliance, in whole or in part, with an investigation, including the removal from any place, concealment, destruction, mutilation, alteration, or falsification of documentary material in the possession, custody, or control of a person subject to the notice.

(c) Knowingly conceals relevant information.

(3) The attorney general may file a petition in the circuit court of the county in which the person is established or conducts business or, if the person is not established in this state, in the circuit court of Ingham county for an order to enforce compliance with a subpoena or this section. A violation of a final order entered pursuant to this section shall be punished as civil contempt.

(4) Upon the petition of the attorney general, the circuit court may enjoin a person from doing business in this state if the person persistently and knowingly evades or prevents compliance with an injunction issued pursuant to this act.

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History: 1976, Act 331, Eff. Apr. 1, 1977.

445.909 Publication, public inspection and copying, and distribution of rules, final judgments, assurance of discontinuance, and other matters; request; fee.

Sec. 9. (1) The attorney general shall publish, make available for public inspection and copying during business hours, and distribute by subscription upon the request of any person:

(a) Rules promulgated under section 3 (2).

(b) Copies of final judgments rendered under this act provided to the attorney general by clerks of the courts pursuant to section 12 (1).

(c) Any other matter as required by Act No. 306 of the Public Acts of 1969, as amended.

(d) An assurance of discontinuance entered into pursuant to section 6.

(2) The attorney general may charge a reasonable fee to cover the expense of copying or distribution.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.909a List of consumer complaints.

Sec. 9a. After each calendar quarter, the attorney general shall by electronic mail provide to the better business bureau of western Michigan, inc., better business bureau of Michiana, inc., better business bureau of Detroit and eastern Michigan, inc., and better business bureau serving NW Ohio and SE Michigan, inc., a list of complaints made by consumers to the attorney general during that calendar quarter of violations of section 3(1)(gg) in connection with a telephone solicitation. The list shall contain the name of each person against whom 1 or more complaints were made and the number of complaints against that person.

History: Add. 2002, Act 613, Imd. Eff. Dec. 20, 2002.

445.910 Class action by attorney general for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 10. (1) The attorney general may bring a class action on behalf of persons residing in or injured in this state for the actual damages caused by any of the following:

(a) A method, act, or practice in trade or commerce defined as unlawful under section 3.

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3 (1) by a final judgment of the circuit court or an appellate court of this state which is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the supreme court of the United States to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1), in a decision which affirms or directs the affirmance of a cease and desist order issued by the federal trade commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 U.S.C. 45(g), and which is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision, a method, act, or practice shall not be deemed to be unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act.

(2) On motion of the attorney general and without bond in an action under this section the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his assets to the detriment of members of the class.

(3) If at any stage of the proceedings the court requires that notice be sent to the class, the attorney general may petition the court to require the defendant to bear the cost of the notice. In determining whether to impose the cost on the defendant or the state, the court shall consider the probability that the attorney general will succeed on the merits of the action.

(4) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(5) An action shall not be brought by the attorney general under this section more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last

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payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends on a later date.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.911 Action by person for declaratory judgment, injunction, or actual damages; class action by person for actual damages; order; hearing; receiver; sequestration of assets; cost of notice; limitations.

Sec. 11. (1) Whether or not he seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under section 3.

(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice which is unlawful under section 3.

(2) Except in a class action, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

(3) A person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured in this state for the actual damages caused by any of the following:

(a) A method, act, or practice in trade or commerce defined as unlawful under section 3.

(b) A method, act, or practice in trade or commerce declared to be unlawful under section 3(1) by a final judgment of the circuit court or an appellate court of this state which is either reported officially or made available for public dissemination pursuant to section 9 by the attorney general not less than 30 days before the method, act, or practice on which the action is based occurs.

(c) A method, act, or practice in trade or commerce declared by a circuit court of appeals or the supreme court of the United States to be an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1), in a decision which affirms or directs the affirmance of a cease and desist order issued by the federal trade commission if the order is final within the meaning of section 5(g) of the federal trade commission act, 15 U.S.C. 45(g), and which is officially reported not less than 30 days before the method, act, or practice on which the action is based occurs. For purposes of this subdivision, a method, act, or practice shall not be deemed to be unfair or deceptive within the meaning of section 5(a)(1) of the federal trade commission act solely because the method, act, or practice is made unlawful by another federal statute that refers to or incorporates section 5(a)(1) of the federal trade commission act.

(4) On motion of a person and without bond in an action brought under subsection (3) the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his assets to the detriment of members of the class.

(5) If at any stage of proceedings brought under subsection (3) the court requires that notice be sent to the class, a person may petition the court to require the defendant to bear the cost of notice. In determining whether to impose the cost on the defendant or the plaintiff, the court shall consider the probability that the person will succeed on the merits of his action.

(6) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(7) An action under this section shall not be brought more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends at a later date. However, when a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.912 Mailing copy of complaint, judgment, decree, or order to attorney general; violation of injunction as evidence.

Sec. 12. (1) Upon commencement of an action brought pursuant to section 11 or section 15, the clerk of the court shall mail a copy of the complaint to the attorney general, and upon entry of a judgment or decree in the action, the clerk of the court shall mail a copy of the judgment, decree, or order to the attorney general.

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(2) In a subsequent action by the attorney general brought pursuant to section 10 proof of a violation of a permanent injunction issued pursuant to section 5 is conclusive evidence that the defendant engaged in a method, act, or practice which is unlawful under this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.913 Filing fees for commencing action or filing voluntary assurance.

Sec. 13. When the attorney general or prosecuting attorney commences an action or files a voluntary assurance pursuant to this act, filing fees shall not be required to be paid.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.914 Investigation by law enforcement officer.

Sec. 14. A law enforcement officer in the state, if requested by the attorney general or a prosecuting attorney, shall aid and assist in an investigation of an alleged or actual violation of this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.915 Investigation and prosecution by prosecuting attorney.

Sec. 15. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.916 Other causes of action not affected; inconsistent ordinance or regulation prohibited.

Sec. 16. This act shall not affect any other cause of action which is available. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated pursuant to this act.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.917 Investigation of financial institutions; subpoena; report.

Sec. 17. (1) The commissioner of the financial institutions bureau may investigate, in the manner set forth in section 7, a state or federally chartered bank, savings and loan association, or credit union, or a regulatory loan licensee which the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.918 Investigation of public utilities; subpoena; report.

Sec. 18. (1) The public service commission may investigate, in the manner set forth in section 7, a public utility subject to its jurisdiction pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, the motor carrier act, Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Michigan Compiled Laws, and the Michigan telecommunication act, Act No. 179 of the Public Acts of 1991, being sections 484.2101 to 484.2605 of the Michigan Compiled Laws, which the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general who shall procure a subpoena on behalf of the commission in accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977;—Am. 1993, Act 10, Imd. Eff. Mar. 31, 1993.

445.919 Investigation of certain persons by cemetery commission; subpoena; report.

Sec. 19. (1) The cemetery commission may investigate, in the manner set forth in section 7, a person subject to Act No. 251 of the Public Acts of 1968, as amended, being sections 456.521 to 456.543 of the Michigan Compiled Laws, who the commission believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commission requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commission in

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accordance with section 7.

(3) Upon conclusion of an investigation, the commission shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.920 Investigation of certain persons by director of department of commerce; subpoena; report.

Sec. 20. (1) The director of the department of commerce may investigate, in the manner set forth in section 7, a person subject to Act No. 265 of the Public Acts of 1964, as amended, being sections 451.501 to 451.818 of the Michigan Compiled Laws; Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Michigan Compiled Laws; Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws; or Act No. 269 of the Public Acts of 1974, being sections 445.1501 to 445.1545 of the Michigan Compiled Laws, who the director believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the director requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the director in accordance with section 7.

(3) Upon conclusion of an investigation, the director shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.921 Investigation of certain persons by commissioner of insurance; subpoena; report.

Sec. 21. (1) The commissioner of insurance may investigate, in the manner set forth in section 7, a person subject to Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, who the commissioner believes has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act.

(2) When the commissioner requires the use of the subpoena power provided in this act, an application shall be made to the attorney general, who shall proceed to procure a subpoena on behalf of the commissioner in accordance with section 7.

(3) Upon conclusion of an investigation, the commissioner shall provide a full report to the attorney general.

History: 1976, Act 331, Eff. Apr. 1, 1977.

445.922 Effective date.

Sec. 22. This act shall take effect April 1, 1977.

History: 1976, Act 331, Eff. Apr. 1, 1977.

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BUYER'S CANCELLATION OF SALES CONTRACTS
Act 276 of 1986

AN ACT to allow for the buyer's cancellation of certain sales contracts.

History: 1986, Act 276, Eff. Mar. 31, 1987.

The People of the State of Michigan enact:

445.931 Cancellation of certain sales contracts by buyer.

Sec. 1. (1) For a sale of goods, services, or memberships whose value equals or exceeds $500.00, if the buyer has been offered anything of more than $25.00 in value in exchange for attending a sales promotion for those goods, services, or memberships, in addition to any other right to revoke an offer, a buyer has the right to cancel the sale and receive a complete refund until midnight of the third business day after the day on which the buyer signed a contract or agreement to purchase.

(2) A contract or agreement to purchase which is subject to cancellation under the provisions of subsection (1) shall prominently contain the following notice, on its face, set in boldface at least 4 points larger than the type of the body of the document. The seller shall enter on the blanks the date the buyer signs the written agreement, the last date for mailing notice of cancellation, and the seller's name and address.

Notice to Purchaser
You are entitled to cancel this agreement without penaltyor obligation for any reason within 3 business days from the date you signed this agreement. Any payments made by you shall be returned within 10 business days followingreceipt by the seller of your cancellation notice. You may mail or deliver a written notice to the seller. If mailed, it mustbe postmarked before midnight of the third business day after you sign the agreement. Deliver or mail the notice to:
Name of
Seller _____ Date Signed _____
Address of Last Cancellation
Seller_____ Date_____

(3) Cancellation occurs when the buyer mails or delivers to the seller written notification of cancellation. If mailed, a cancellation notice is given on the date the notice is postmarked.

(4) A written notice given by the buyer for cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the sale.

(5) A buyer shall not cancel a sale if the buyer requests the seller to provide goods, services, or memberships without delay because of an emergency, and any of the following apply:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation.

(b) The buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.

(c) The goods, services, or memberships cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) This act does not limit or in any way affect a buyer's right to cancel a sale under any other provision of law.

(7) If a gift is given to the prospective buyer as an inducement to attend a sales promotion, regardless of intent, the prospective buyer shall have the right to keep the gift without obligation whether or not a contract is canceled.

(8) For purposes of this section "business day" means Monday through Friday and shall not include Saturday, Sunday, or the following business holidays: New Year's day; Martin Luther King, Jr. day; Memorial day; July 4; Labor day; Columbus day; Veterans' day; Thanksgiving day; and Christmas day.

History: 1986, Act 276, Eff. Mar. 31, 1987.

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RENTAL-PURCHASE AGREEMENT ACT
Act 424 of 1984

AN ACT to define and regulate rental-purchase agreements; to require certain disclosures; and to provide for remedies and penalties.

History: 1984, Act 424, Eff. Mar. 29, 1985.

The People of the State of Michigan enact:

445.951 Short title.

Sec. 1. This act shall be known and may be cited as the "rental-purchase agreement act".

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.952 Definitions.

Sec. 2. As used in this act:

(a) "Lessee" means a person who leases property pursuant to a rental-purchase agreement.

(b) "Lessor" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement.

(c) "Period" means a day, week, 1 month, or other subdivision of a year.

(d) "Rental-purchase agreement" means an agreement for the use of personal property by a lessee primarily for personal, family, or household purposes, for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the lessee to become the owner of the property. Rental-purchase agreements shall not include any of the following:

(*i*) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16) and section 1602(g) of the truth in lending act, 15 U.S.C. 1602(g).

(*ii*) A lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(a)(6).

(*iii*) Any lease for agricultural, business, or commercial purposes.

(*iv*) Any lease made to an organization.

(*v*) Any lease of money or intangible personal property.

(*vi*) A lease or agreement which constitutes a retail installment transaction as defined in section 2 of the retail installment sales act, Act No. 224 of the Public Acts of 1966, being section 445.852 of the Michigan Compiled Laws.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.953 Rental-purchase agreement; form; contents; information requirements; separate form; disclosure of additional information.

Sec. 3. (1) A rental-purchase agreement shall be in the form of a written statement which shall include all of the following:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor including whether the property is new or previously rented. If a lease is for multiple items, a description of each item may be provided in a separate statement which is incorporated by reference in the primary disclosure statement.

(b) The total amount of any initial payment, including any advance payment, delivery charge, or any trade-in allowance to be paid by the lessee at or before consummation of the rental-purchase agreement.

(c) The amount and timing of payments.

(d) The amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments.

(e) A statement of the party liable for loss, damage in excess of normal wear and tear, or destruction to the leased property.

(f) The lessee's right to reinstate and the amount or method of determining the amount of any penalty or other charge for reinstatement as established in section 8.

(g) The party responsible for maintaining or servicing the leased property together with a brief description of this responsibility.

(h) A statement of the conditions under which the lessee or lessor may terminate the lease.

(i) A statement of the product of the number of payments times the amount of each payment necessary to acquire ownership of the leased property.

(j) A statement that the lessee has the option to purchase the leased property during the term of the rental purchase agreement and, at what price, formula, or by what method the price is determined.

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(k) The cash price of the property if purchased rather than leased.

(*l*) A statement that if any part of a manufacturer's warranty remains on the leased property at the point that a lessee assumes ownership of the property, the warranty will be passed on to the lessee.

(m) A notice in a prominent place in type not smaller than the size of 12-point type, or in legible print with letters not smaller than 1/8 inch, in substantially the following form:

NOTICE: THIS AGREEMENT IS REGULATED BY STATE LAW AND MAY BE ENFORCED BY THE ATTORNEY GENERAL OR BY PRIVATE LEGAL ACTION.

(2) All information required by this section shall be stated in a clear and coherent manner, using words and phrases of common meaning. The information shall be appropriately divided and captioned by its sections. All numerical amounts and percentages shall be stated in figures. The information shall also be disclosed by the lessor prior to the signing of the lease by the lessee on a dated written statement which identifies the lease or rental-purchase agreement and the parties to it. The written statement shall contain all of the information required by this section and shall be provided directly on the lease contract or instrument or on a separate form. A separate form may utilize the format provided for in section 19.

(3) At the lessor's option, information in addition to that required by this section may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or distract attention from the required information.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.954 Amount necessary to acquire ownership; amount applied toward purchase price.

Sec. 4. (1) The amount to be paid by the lessee to acquire ownership as disclosed in section 3(j) shall not be greater than the cash price as disclosed under section 3(k) minus an amount equal to 45% of all periodic rental payments made by the lessee.

(2) If at any time an amount equal to 45% of the total periodic rental payments paid by the lessee to the lessor equals the cash purchase price disclosed under section 3(k), then the lessee shall acquire ownership of the rental property.

(3) This section shall not prohibit a lessor from offering a rental purchase agreement which provides that an amount equal to 45% or more of the periodic rental payments is applied toward the purchase price disclosed in section 3(k).

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.955 Advertising requirements; requirements as to items displayed or offered under rental-purchase agreement.

Sec. 5. (1) An advertisement for any rental-purchase agreement shall not state that a specific lease of any property at specific amounts or terms is available unless the lessor usually and customarily leases or will lease the property at those amounts or terms.

(2) An advertisement shall not state that a payment or a periodic payment is due at the start of a lease without disclosing both the payment due at the start of the lease, the periodic payment, all other charges payable by the lessee, and the total of all periodic payments necessary to obtain ownership.

(3) Every item displayed or offered under a rental-purchase agreement shall have clearly and conspicuously indicated in arabic numerals, so as to be readable and understandable by visual inspection, each of the following stamped upon or affixed to the item:

(a) The cash price of the item.

(b) The amount of a periodic payment.

(c) The total number of periodic payments required for ownership.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.956 Prohibited provisions in rental-purchase agreement.

Sec. 6. A rental-purchase agreement shall not contain a provision requiring any of the following:

(a) A garnishment of wages or a power of attorney to confess a judgment.

(b) Authorization to the lessor or a person acting on the lessor's behalf to unlawfully enter upon the lessee's premises or to commit any breach of the peace in the repossession of goods.

(c) The lessee to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf, as the lessee's agent in collection of payments under the lease or in the repossession of goods.

(d) The lessee to agree not to assert against the lessor or against an assignee a claim or defense arising out of the lease.

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(e) A requirement for any collection or repossession charges in excess of those allowable under section 7(e) and applicable court rules.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.957 Prohibited requirements.

Sec. 7. A lessor shall not require any of the following:

(a) The purchase of insurance by the lessee from the lessor of a leased item.

(b) A payment which is in excess or in addition to a normal periodic payment and which is required in order to purchase a leased item at the conclusion of the periodic payments necessary to acquire ownership.

(c) A penalty for early termination of a rental-purchase agreement or for the return of an item at any point.

(d) A processing fee of any sort.

(e) A fee for in home collection of a payment unless the lessee has expressly agreed to the fee and the amount of the fee is disclosed.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.958 Failure to make timely periodic payments; rights of lessee; reinstatement fee; delivery fee; same or substitute item provided on reinstatement.

Sec. 8. (1) A lessee who fails to make timely periodic payments shall have the right to reinstate the original rental-purchase agreement without losing any rights or options previously acquired under the rental-purchase agreement if both of the following apply:

(a) The lessee has not missed more than 3 periodic payments.

(b) More than 1 periodic scheduled payment has been missed and the lessee has surrendered the item to the lessor during the time in which payments were missed.

(2) A lessee shall not be charged a reinstatement fee due to missed payments unless the lessee has missed more than 1 periodic payment. A reinstatement fee shall equal the outstanding balance of any missed payments plus 5% of the balance of the missed payments or $5.00, whichever is less. A delivery fee not to exceed the original delivery fee may be charged if redelivery of an item is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of comparable quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all of the information required in section 3.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.959 Temporary or permanent injunction; venue; costs; civil penalty; notice of intended action; opportunity to cease and desist or to confer with attorney general; notice of alleged violation; civil penalty for knowing violation.

Sec. 9. (1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to this act, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of this act the court may assess the defendant a civil penalty of not more than $25,000.00.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the attorney general shall notify the person of the attorney general's intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(3) A prosecuting attorney or law enforcement officer receiving notice of an alleged violation of this act, or of a violation of an injunction, order, decree, or judgment issued in an action brought pursuant to this section, or of an assurance under this act, shall immediately forward written notice of the violation together with any information he or she may have to the office of the attorney general.

(4) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than $5,000.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain

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jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.960 Assurance of discontinuance.

Sec. 10. (1) When the attorney general has authority to institute an action or proceeding pursuant to section 9, the attorney general may accept an assurance of discontinuance of a method, act, or practice which is alleged to be unlawful under this act from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not constitute an admission of guilt nor be introduced in any other proceeding. The assurance may include a stipulation for any or all of the following:

(a) The voluntary payment by the person for the costs of investigation.

(b) An amount to be held in escrow pending the outcome of an action.

(c) An amount for restitution to an aggrieved person.

(2) An assurance of discontinuance shall be in writing and may be filed with the circuit court of Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by a court for good cause.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.961 Subpoena; service and contents of notice; extension of reporting date; modification or setting aside of notice and subpoena; confidentiality; disclosures; disclosure as misdemeanor; penalty.

Sec. 11. (1) Upon the ex parte application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after an ex parte hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act. A person served with a subpoena may be accompanied by counsel when he or she appears before the attorney general. The subpoena may compel a person to produce the books, records, papers, documents, or things relating to an alleged violation of this act. During the examination of documentary material under the subpoena, the court may require a person having knowledge of the documentary material or the matters contained therein to attend and give testimony under oath or acknowledgment with respect to the documentary material.

(2) The subpoena shall include the notice of the time, place, and cause of the taking of testimony, the examination, or the attendance and shall allow not less than 10 days before the date of the taking of testimony or examination, unless for good cause shown the court shortens that period of time.

(3) Service of the notice shall be in the manner provided and subject to the provisions that apply to service of process upon a defendant in a civil action commenced in the circuit court.

(4) The notice shall:

(a) State the time and place for the taking of testimony or the examination and the name and address of the person to be examined. If the name is not known, the notice shall give a general description sufficient to identify the person or the particular class or group to which the person belongs.

(b) State a reference to this section and the general subject matter under investigation.

(c) Describe the documentary material to be produced with reasonable specificity so as to indicate fairly the material demanded.

(d) Prescribe a return date within which the documentary material shall be produced.

(e) Identify the members of the attorney general's staff to whom the documentary material shall be made available for inspection and copying.

(5) At any time before the date specified in the notice, upon motion for good cause shown, the court may extend the reporting date or modify or set aside the notice and subpoena.

(6) The documentary material or other information obtained by the attorney general pursuant to an investigation under this section shall be confidential records of the office of the attorney general and shall not be available for public inspection or copying or divulged to any person except as provided in this section. The attorney general may disclose documentary material or other information as follows:

(a) To other law enforcement officials.

(b) In connection with an enforcement action brought pursuant to this act.

(c) Upon order of the court, to a party in a private action brought pursuant to this act.

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(7) A person who discloses information designated confidential by this section, except as permitted by subsection (6) or under court order, is guilty of a misdemeanor and may be fined not more than $2,500.00, or imprisoned for not more than 1 year, or both.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.962 Compliance with terms of notice; prohibited conduct; civil penalty; petition for order to enforce compliance; violation of final order as civil contempt; enjoining person from doing business in state.

Sec. 12. (1) A person upon whom a notice is served pursuant to section 11 shall comply with the terms of the notice unless otherwise provided by the order of the circuit court.

(2) A person who does any of the following shall be assessed a civil penalty of not more than $5,000.00:

(a) Knowingly without good cause fails to appear when served with a notice.

(b) Knowingly avoids, evades, or prevents compliance, in whole or in part, with an investigation, including the removal from any place, concealment, destruction, mutilation, alteration, or falsification of documentary material in the possession, custody, or control of a person subject to the notice.

(c) Knowingly conceals relevant information.

(3) The attorney general may file a petition in the circuit court of the county in which the person is established or conducts business or, if the person is not established in this state, in the circuit court of Ingham county for an order to enforce compliance with a subpoena or this section. A violation of a final order entered pursuant to this section shall be punished as civil contempt.

(4) Upon the petition of the attorney general, the circuit court may enjoin a person from doing business in this state if the person persistently and knowingly evades or prevents compliance with an injunction issued pursuant to this act.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.963 Class action for actual damages; order; appointment of receiver; sequestration of assets; cost of notice; effect of bona fide error; limitations.

Sec. 13. (1) The attorney general may bring a class action on behalf of persons residing in or injured in this state for the actual damages caused by a method, act, or practice in trade or commerce which is prohibited by this act.

(2) On motion of the attorney general and without bond in an action under this section the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his or her assets to the detriment of members of the class.

(3) If at any stage of the proceedings the court requires that notice be sent to the class, the attorney general may petition the court to require the defendant to bear the cost of the notice. In determining whether to impose the cost on the defendant or the state, the court shall consider the probability that the attorney general will succeed on the merits of the action.

(4) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(5) An action shall not be brought by the attorney general under this section more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends on a later date.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.964 Action for declaratory judgment or injunction; action for actual damages and attorneys' fees; class action for actual damages; order; appointment of receiver; sequestration of assets; cost of notice to class; effect of bona fide effort; limitations; defense or counterclaim.

Sec. 14. (1) Whether or not a person seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under this act.

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(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice which is unlawful under this act.

(2) Except in a class action, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

(3) A person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured in this state for the actual damages caused by a method, act, or practice which is prohibited by this act.

(4) On motion of a person and without bond in an action brought under subsection (3) the court may make an appropriate order: to reimburse persons who have suffered damages; to carry out a transaction in accordance with the aggrieved persons' reasonable expectations; to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or to grant other appropriate relief. The court after a hearing may appoint a receiver or order sequestration of the defendant's assets if it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his or her assets to the detriment of members of the class.

(5) If at any stage of proceedings brought under subsection (3) the court requires that notice be sent to the class, a person may petition the court to require the defendant to bear the cost of notice. In determining whether to impose the cost on the defendant or the plaintiff, the court shall consider the probability that the person will succeed on the merits of his or her action.

(6) If the defendant shows by a preponderance of the evidence that a violation of this act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, the amount of recovery shall be limited to actual damages.

(7) An action under this section shall not be brought more than 6 years after the occurrence of the method, act, or practice which is the subject of the action nor more than 1 year after the last payment in a transaction involving the method, act, or practice which is the subject of the action, whichever period of time ends at a later date. However, when a person commences an action against another person, the defendant may assert, as a defense or counterclaim, any claim under this act arising out of the transaction on which the action is brought.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.965 Mailing copy of complaint, judgment, decree, or order to attorney general.

Sec. 15. (1) Upon commencement of an action brought pursuant to section 14 or 18, the clerk of the court shall mail a copy of the complaint to the attorney general, and upon entry of a judgment or decree in the action, the clerk of the court shall mail a copy of the judgment, decree, or order to the attorney general.

(2) In a subsequent action by the attorney general brought pursuant to section 13, proof of a violation of a permanent injunction issued pursuant to this act is conclusive evidence that the defendant engaged in a method, act, or practice which is unlawful under this act.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.966 Payment of filing fees.

Sec. 16. Payment of filing fees shall not be required in an action or filing for a voluntary assurance by the attorney general or prosecuting attorney pursuant to this act.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.967 Aid and assistance of law enforcement officer.

Sec. 17. A law enforcement officer in the state, if requested by the attorney general or a prosecuting attorney, shall aid and assist in an investigation of an alleged or actual violation of this act.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.968 Investigation and prosecution by prosecuting attorney.

Sec. 18. A prosecuting attorney may conduct an investigation pursuant to this act and may institute and prosecute an action under this act in the same manner as the attorney general.

History: 1984, Act 424, Eff. Mar. 29, 1985.

445.969 Other causes of action not affected; inconsistent ordinance or regulation prohibited.

Sec. 19. This act shall not affect any other cause of action which is available. A city, village, township, or county shall not enact an ordinance or other regulation inconsistent with this act or with a rule promulgated pursuant to this act.

History: 1984, Act 424, Eff. Mar. 29, 1985.

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445.970 Example of form satisfying requirements of act.

Sec. 20. The following form is an example of the form which may be used to satisfy the requirements of this act:

RENTAL PURCHASE AGREEMENT

1. Lessor(s) Lessee(s)
2. Description of Leased Property:

Item	Quantity	Mfg.	Model	New/Previously Rented
	Serial #			

3. Total Payment Due at Beginning of Contract:

Advance Payment of $_____
Delivery Charge $_____
Use Taxes $_____
Other $_____ (please specify).
Total $_____

4. Term and cost of the lease (monthly/weekly)
   The first monthly/weekly payment of $_____ is due on _____.
   Other regular payments of $_____ on the _____ of month/week thereafter.
   Total number of monthly/weekly payments _____.
   Total amount of all other charges $_____ (please specify).
   Sum total of all payments $_____.
5. Periodic Payment:
   You may renew the lease weekly or monthly as you choose.
   The weekly rental would be
   $_____.
   The monthly rental would be
   $_____.
6. For a charge of $_____ per payment, we can pick up the payment at your home.
   Sign here if you want this service
   _____.
7. Liability:
8. Maintenance:
   We will maintain the leased property in good working condition during the term of the lease and will provide all necessary service and repair (specify if in home or in store) if you notify us by phone or mail that service is needed. We are not responsible for maintenance done by anyone other than us.
9. Termination and Default:
   You may terminate this lease at the end of any weekly/monthly term without paying any charges other than those previously due.
   We may terminate this lease for a default in payment or breach of any other material term of the lease. If a termination occurs, we shall be entitled to all rental payments up to the date of termination and the expenses of repossessing the property if you fail to surrender it to us.
10. Reinstatement:
    We do not charge late payment charges. If you elect to renew within 3 weeks/months, and surrender the property within 1 week/month of missing a payment, you may reinstate without loss of any rights or options previously acquired. However, if you miss more than 1 payment, a reinstatement fee of 5% of the balance of the missed payments, or $5.00, whichever is less, may be charged. Also, a delivery fee, not to exceed the original delivery fee, may be charged if redelivery of the property is required.
11. Purchase Option:
    You may purchase the property leased to you under this contract for the cash price minus 45% of all periodic payments made. The property leased under this contract would cost $_____ if purchased rather than leased.
12. Warranty:
    A manufacturer's warranty on the property leased under this contract shall be passed on to the lessee if the lessee purchases the property.

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13. Notice:

This agreement is regulated by state law enforceable by the attorney general or by private legal action. I have read the above statement before signing this agreement.

Date: Lessee:

Date: Lessee:

History: 1984, Act 424, Eff. Mar. 29, 1985.

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LEASE CONTRACTS FOR MOTOR VEHICLES
Act 169 of 1990

AN ACT to require the inclusion of certain statements in lease contracts involving motor vehicles; and to provide remedies and penalties.

History: 1990, Act 169, Eff. Jan. 1, 1991.

The People of the State of Michigan enact:

445.991 Definitions.

Sec. 1. As used in this act:

(a) "Lease contract" means a contract for the lease of a motor vehicle by a natural person for a term exceeding 30 days.

(b) "Lessee" means a natural person who leases a motor vehicle under a lease contract.

(c) "Lessor" means a natural person, partnership, corporation, association, or other legal entity that is engaged in the business of leasing, offering to lease, or arranging the lease of a motor vehicle under a lease contract.

(d) "Motor vehicle" means a vehicle, including passenger vans and minivans, that is self-propelled, that is capable of being operated on a highway or street in this state, and that is primarily intended for the transport of persons.

History: 1990, Act 169, Eff. Jan. 1, 1991.

445.992 Lease contract for motor vehicle; statement required; signature or initials of lessee.

Sec. 2. (1) A lease contract for a motor vehicle shall have a statement in a separate paragraph in the lease contract or on a separate sheet of paper attached to the lease contract advising the lessee that the early termination payoff balance of the motor vehicle as determined by the lessor may be different than the actual cash value of the motor vehicle as determined by the insurer of the vehicle.

(2) If under the terms of the contract the lessee is required to pay to the lessor the difference between the early termination payoff balance as determined by the lessor and the actual cash value as determined by the insurer, a statement explaining this fact shall be included in the lease contract immediately after the statement required by subsection (1). A space for the signature or initials of the lessee shall appear adjacent to the statement and the lessee shall place his or her signature or initials in that space indicating that he or she has read this statement and understands its content.

History: 1990, Act 169, Eff. Jan. 1, 1991.

445.993 Failure of lessor to provide notice or obtain lessee's signature or initials; civil action; damages; attorney's fees; limitation.

Sec. 3. (1) If a lessor fails to provide the notice required by this act or fails to obtain the lessee's signature or initials in the space provided and the lessor has invoked the terms of the contract requiring the lessee to pay to the lessor the difference between the early termination payoff balance as determined by the lessor and the actual cash value as determined by the insurer, then the lessor is subject to a civil action brought by the lessee.

(2) If the lessee is successful in the civil action, then the lessee may recover actual damages or $250.00, whichever is greater, together with reasonable attorney's fees.

(3) For purposes of this section, actual damages may not exceed the difference between the early termination payoff balance as determined by the lessor and the actual cash value as determined by the insurer.

History: 1990, Act 169, Eff. Jan. 1, 1991.

445.994 Refusal to sign lease contract.

Sec. 4. If a lessee does not agree to sign a lease contract in the space provided adjacent to the notice required by this act, the lessor may refuse to lease a motor vehicle to the lessee.

History: 1990, Act 169, Eff. Jan. 1, 1991.

445.995 Effective date.

Sec. 5. This act shall take effect January 1, 1991.

History: 1990, Act 169, Eff. Jan. 1, 1991.

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WHEELCHAIRS
Act 54 of 1994

AN ACT to regulate the selling and leasing of wheelchairs; to require the manufacturer to provide an express warranty; and to provide for remedies.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

The People of the State of Michigan enact:

445.1081 Definitions.

Sec. 1. As used in this act:

(a) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a wheelchair, including the cost of an alternative wheelchair or other assistive device or service for mobility.

(b) "Consumer" means any of the following:

(*i*) The purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale.

(*ii*) A person to whom the wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair.

(*iii*) A person who may enforce the warranty.

(*iv*) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(c) "Demonstrator" means a wheelchair used primarily for the purpose of demonstration to the public.

(d) "Early termination cost" means an expense or obligation that a wheelchair lessor incurs as a result of both the termination of a written lease before the termination date of the lease and the return of a wheelchair to a manufacturer under section 3. Early termination cost includes a penalty for prepayment under a finance arrangement.

(e) "Early termination savings" means an expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before the termination date of the lease and the return of a wheelchair to a manufacturer under section 3. Early termination savings include an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(f) "Express warranty" means an express warranty as determined under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws. Express warranty shall cover everything except the tires and batteries.

(g) "Manufacturer" means a person who manufactures or assembles wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch, and any warrantors of the manufacturer's wheelchairs, but does not include a wheelchair dealer.

(h) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a wheelchair and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by a consumer.

(i) "Reasonable attempt to repair" means either or both of the following occurring within the term of an express warranty applicable to a new wheelchair or within 1 year after first delivery of the wheelchair to a consumer, whichever is sooner:

(*i*) The same nonconformity is subject to repair at least 4 times by the manufacturer, wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers.

(*ii*) The wheelchair is out of service for an aggregate of at least 30 business days.

(j) "Wheelchair" means a chair mounted on wheels used by a person with a disability to enhance mobility.

(k) "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

(*l*) "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights under a written lease.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1082 Sale or lease of wheelchair; express warranty; duration; failure to furnish.

Sec. 2. (1) A manufacturer who sells or leases a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the

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express warranty shall be not less than 1 year after first delivery of a new wheelchair to the consumer or 60 days in the case of a used, refurbished or reconditioned wheelchair.

(2) If a manufacturer fails to furnish an express warranty as required by this section, the wheelchair shall be covered by a warranty from the manufacturer as if the manufacturer had furnished an express warranty to the consumer as required by this section.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1083 Nonconformity; repair by manufacturer; reimbursement to authorized dealer; duty of manufacturer.

Sec. 3. (1) If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before 1 year after first delivery of the wheelchair to a consumer, the nonconformity shall be repaired by the manufacturer as required by this act. If the manufacturer has authorized the dealer to make the repair, the dealer shall be reimbursed by the manufacturer for the dealer's costs for the repair. The manufacturer shall respond to a dealer's request for authorization not later than the end of the business day following the day the request was made.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do 1 of the following:

(a) If the wheelchair was purchased, at the direction of a consumer do 1 of the following:

(*i*) Accept return of the wheelchair and replace the wheelchair with 1 of comparable quality, size, and function and refund any collateral costs to the consumer, a holder of a security interest, or a third party who purchased the wheelchair.

(*ii*) Accept return of the wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's wheelchair or third party who purchased the wheelchair not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid by the consumer, the holder of a security interest, or the third party who purchased the wheelchair less a reasonable allowance for use. A reasonable allowance for use shall not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the wheelchair was used before the consumer first reported the nonconformity to the wheelchair dealer.

(b) If the wheelchair is leased, accept return of the wheelchair, refund to the wheelchair lessor and to any holder of a perfected security interest in the wheelchair the current value of the written lease and refund to the consumer or third party the amount that the consumer or third party paid under the written lease plus any collateral costs, less a reasonable allowance for use. The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth that value, less the wheelchair lessor's early termination savings. A reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the wheelchair was used before the consumer first reported the nonconformity to the manufacturer, wheelchair lessor, or wheelchair dealer.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1084 Receipt by consumer of comparable wheelchair or refund; transfer of wheelchair to manufacturer.

Sec. 4. (1) To receive a wheelchair of comparable quality, size, and function or a refund, a consumer of a purchased wheelchair shall first offer to the manufacturer of the wheelchair having the nonconformity the transfer of that wheelchair to the manufacturer.

(2) Not later than 30 business days after the offer described in subsection (1), the manufacturer shall provide the consumer with a wheelchair of comparable quality, size, and function or a refund.

(3) When the manufacturer provides the wheelchair or refund, the consumer shall return the wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer possession to the manufacturer.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1085 Leased wheelchair; refund.

Sec. 5. (1) To receive a refund due on a leased wheelchair, a consumer shall offer to return the wheelchair having the nonconformity to the wheelchair lessor.

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(2) Not later than 30 business days after the offer described in subsection (1), the wheelchair lessor shall provide the refund to the consumer.

(3) When the wheelchair lessor provides the refund, the consumer shall return to the wheelchair lessor the wheelchair having the nonconformity.

(4) A wheelchair lessor shall offer to transfer possession of the wheelchair returned pursuant to subsection (3) to the manufacturer. Not later than 30 business days after that offer, the manufacturer shall provide the refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer possession to the manufacturer.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1086 Sale or lease of returned wheelchair.

Sec. 6. A wheelchair returned by a consumer in this state under this act, or by a consumer in another state under a similar law of that state, shall not be sold or leased again in this state unless full disclosure of the reasons for return is made to the prospective buyer or lessee.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

445.1087 Rights and remedies of consumer.

Sec. 7. (1) This act does not limit the rights or remedies available to a consumer under any other statute of this state.

(2) A waiver by a consumer of rights under this act is void.

(3) In addition to pursuing any other remedy, a consumer may bring an action to recover for damages caused by a violation of this act. If the manufacturer is found to have violated this act, the court shall award the consumer the amount of actual damages caused by the violation and may award the consumer costs and reasonable attorney fees.

History: 1994, Act 54, Imd. Eff. Mar. 31, 1994.

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HOME IMPROVEMENT FINANCE ACT
Act 332 of 1965

AN ACT to define and regulate home improvement charge agreements and home improvement installment contracts for the modernization, rehabilitation, repair, alteration, or improvement upon or in connection with real property; to prescribe the functions of circuit courts, the attorney general, and prosecuting attorneys; and to provide remedies and penalties.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

The People of the State of Michigan enact:

PART 1

445.1101 Home improvement finance act; short title.

Sec. 101. This act shall be known and may be cited as the "home improvement finance act".

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1102 Definitions.

Sec. 102. As used in this act, except where the context clearly indicates otherwise:

(a) "Banking institution" means a bank, bank and trust company, trust company, savings bank, private bank, or a national banking association, organized and doing business under the provisions of any law of this state, or of any other state of the United States, or under the provisions of any law of the United States of America.

(b) "Cash price" means the cash sales price stated in a home improvement installment contract, or the cash sales price of goods and services that are the subject of a home improvement charge sale, for which the contractor would sell or furnish to the buyer and the buyer would buy or obtain from the contractor the goods and services which are the subject of the contract or home improvement charge sale, if the sale were a sale for cash, instead of a home improvement installment sale or home improvement charge sale, and may include any taxes.

(c) "Collateral" means real or personal property subject to a pledge, security interest, mortgage, encumbrance, judgment, or other lien which secures the performance of an obligation of the buyer, or a surety or guarantor for the buyer, under a home improvement installment contract or any extension, deferment, renewal, or other revision thereof.

(d) "Down payment" means the amounts paid in money and in goods to the home improvement contractor and allowances given by the home improvement contractor to the buyer prior to or contemporaneous with the execution of a home improvement installment contract.

(e) "Finance charge", "credit service charge", "service charge", "time price differential", or a similar term means that amount by which the time sale price exceeds the aggregate of the cash price and the amounts, if any, included for insurance premiums and official fees.

(f) "Financing agency" means a person other than a home improvement contractor engaged, directly or indirectly, as principal, agent, or broker in the business of purchasing, acquiring, financing, soliciting, or arranging for the financing or acquisition of home improvement installment contracts or home improvement charge agreements or any obligation in connection therewith. It does not include a person to the extent that the person makes bona fide commercial loans to contractors or financing agencies and takes assignments of, or an interest in, an aggregation of such contracts only as security for such commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of such contracts remains vested in the assignor and collection of payments on such contracts is made by the assignor.

(g) "Goods" means chattels which are furnished or used in the modernization, rehabilitation, repair, alteration, or improvement of real property, but not in the construction of new homes.

(h) "Holder" means a person, including a contractor, currently entitled to the rights of a contractor under a home improvement installment contract or home improvement charge agreement.

(i) "Home improvement charge agreement" or "agreement" means an instrument prescribing the terms of home improvement charge sales, whether secured or unsecured, which may be made under the agreement from time to time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

(j) "Home improvement charge sale" means the sale of goods and furnishing of services by a contractor to a retail buyer pursuant to a home improvement charge agreement and as to which sale the cash price is stated to be in excess of $300.00.

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(k) “Home improvement contractor” or “contractor” means a person who sells goods and services, or agrees to furnish or render services, to a retail buyer pursuant to a home improvement installment contract, or sells goods and services to a retail buyer pursuant to a home improvement charge agreement, but not in connection with construction of new homes.

(*l*) “Home improvement installment contract” or “contract” means an agreement covering a home improvement installment sale, whether contained in 1 or more documents, together with any accompanying promissory note or other evidence of indebtedness, pursuant to which the buyer promises to pay in installments all or any part of the time sale price or prices of goods and services, or services. It does not include such an agreement:

(*i*) Pertaining to real property used for a commercial or business purpose.

(*ii*) Covering the sale of goods by a person who neither directly nor indirectly performs or arranges to perform any services in connection with the installation of or application of the goods.

(*iii*) Covering only an appliance designed to be free-standing and not built into and permanently affixed as an integral part of the structure such as a stove, freezer, refrigerator, air conditioner other than one connected with a central heating system, hot water heater, and the like.

(*iv*) Covering the sale of goods and the furnishing of services or the furnishing of services thereunder for a cash price stated therein of $300.00 or less.

(*v*) If the loan is contracted for or obtained directly by the retail buyer from the lending institution, person, or corporation.

(*vi*) Which is a home improvement charge agreement.

(m) “Home improvement installment sale” or “sale” means the sale of goods and furnishing of services or the furnishing of services by a contractor to a retail buyer pursuant to a home improvement installment contract in which the cash price is stated to be in excess of $300.00.

(n) “Official fees” means the fees required by law to be paid to the appropriate public officer for obtaining any permit or filing or recording or releasing any judgment, mortgage, or other lien or perfecting any security interest taken or reserved as security in connection with a home improvement installment contract.

(o) “Person” means an individual, partnership, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized.

(p) “Principal amount financed” means the cash price of the goods and services which are the subject matter of the home improvement installment sale minus the amount of the buyer's down payment, plus the amounts, if any, included for insurance and official fees.

(q) “Retail buyer” or “buyer” means a person who buys goods and services, or services from a contractor pursuant to a home improvement installment contract, or goods and services from a contractor pursuant to a home improvement charge agreement.

(r) “Services” means work, labor, and services furnished in connection with the installation or application of goods.

(s) “Time balance” means the sum of the principal amount financed and the finance charge.

(t) “Time sale price” means the total of the cash price of the goods and services or services, the finance charge, and the amounts, if any, included for insurance premiums and official fees.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1111 Effect of compliance with truth in lending act.

Sec. 111. Compliance with the requirements of the truth in lending act, title I of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647, and 1661 to 1667e, is compliance with the disclosure provisions of section 203(b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), and section 204a(3).

History: Add. 1969, Act 30, Imd. Eff. July 10, 1969;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985;—Am. 1993, Act 97, Imd. Eff. July 13, 1993.

PART 2

445.1201 Home improvement installment contract; date, form.

Sec. 201. A home improvement installment contract shall be dated and in writing and the printed portion thereof shall be in at least 8-point type.

History: 1965, Act 332, Eff. Jan. 1, 1966.

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445.1202 Home improvement installment contract; contents required.

Sec. 202. A home improvement installment contract shall contain:

(a) The entire agreement of the parties with respect to the goods and services.

(b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "home improvement installment contract" and shall appear in at least 10-point bold type.

(c) A notice in at least 8-point bold type reading as follows: "Notice to buyer: (1) Do not sign this contract before you read it. (2) You are entitled to a completely filled-in copy of this contract. (3) Under the law, you have the right to pay off in advance the full amount due and, under certain conditions, to obtain a partial refund of the finance charge. (4) You may rescind or cancel this contract, not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in the contract or by mailing the notice or cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if you rescind after 5 p.m. on the business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction".

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1203 Home improvement installment contract; additional required contents.

Sec. 203. Except as provided in sections 306, 307 and 308, a home improvement installment contract shall contain the following:

(a) The name and place of business of the contractor, the name and address of the buyer as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

(b) The cash price of the goods and services which are the subject matter of the sale.

(c) The amount of the buyer's down payment, itemizing any allowance given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The unpaid cash balance which is the difference between item (b) and item (c).

(e) The premium paid for each type of insurance included in the contract for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(f) The amount of official fees, if any.

(g) The principal amount financed, which is the sum of items (d), (e) and (f).

(h) The amount of the finance charge expressed in dollars.

(i) The time balance, which is the sum of items (g) and (h), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(j) The time sale price.

(k) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or typewritten and underlined: This contract is not payable in installments of equal amounts. Followed, if there be but 1 larger installment, by: An installment of $..... will be due on ....., or if there be more than 1 larger installment, by: Larger installments will be due as follows: ..... (Insert the amount or amounts of every larger installment and its due date).

(*l*) This contract may be rescinded or cancelled by the buyer not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in this contract or by mailing the notice of cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if he rescinds after 5 p.m. on the business day following, he is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computation made in determining the amount to be paid by the buyer. The contract need not make any reference to item (e) or item (f) if a charge for the item is not included in the contract.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1204 Home improvement installment contract; delivery of copy to buyer; acknowledgment, form.

Sec. 204. The contractor shall deliver to the buyer at the time the contract is executed a copy thereof completed in accordance with the provisions of this act. Until the contractor does so, the buyer shall not be obligated to pay. Any acknowledgment by the buyer of the delivery of a copy of the contract shall be printed

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or written in a size equal to at least 10-point bold type and, if contained in the contract, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section of delivery of a copy of a contract, shall be evidence of such delivery and of compliance with this section in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1204a Home improvement charge agreement generally.

Sec. 204a. (1) On or after the effective date of this section, a contractor may enter into a home improvement charge agreement with a retail buyer. A home improvement charge agreement shall be in writing and dated, and shall be signed by the buyer or the authorized representative of the buyer. A copy of a home improvement charge agreement shall be delivered or mailed to the buyer before the date on which the first payment is due under the agreement. An acknowledgment by the buyer of delivery of a copy of the agreement contained in the body of the agreement shall be in a size equal to at least 10-point bold type and shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer. A home improvement charge agreement shall not be signed by the buyer when it contains blank spaces of items which are essential provisions of the transaction to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of the delivery and that the agreement, when signed, did not contain a blank space as provided in this subsection. A home improvement charge agreement shall state the maximum amount and rate of the time price differential to be charged and paid pursuant to the agreement. A home improvement charge agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type: “Notice to the buyer—Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign.”

(2) A home improvement charge agreement shall contain substantially the following notice:

“A home improvement charge sale made pursuant to this agreement may be rescinded or canceled by the buyer not later than 5 p.m. on the business day following the date of the sale by giving written notice of rescission to the contractor or an agent of the contractor at his or her place of business given in this agreement or by mailing the notice of cancellation to the contractor to his or her place of business given in the agreement by depositing a properly addressed certified letter in a United States post office or mailbox; but if the buyer rescinds after 5 p.m. on the following business day, the buyer is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.” The notice required by this subsection shall also be given to the buyer at the time of each purchase under the home improvement charge agreement.

(3) The buyer under a home improvement charge agreement shall promptly be supplied with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon in writing, at the end of which there is an unpaid balance greater than $1.00 under the agreement, which statement shall recite the following:

(a) The unpaid balance under the home improvement charge agreement at the beginning and at the end of the period.

(b) The cash price of each purchase under the home improvement charge agreement by the buyer during the period and, unless a sales slip or a memorandum of each purchase is attached to the statement, the purchase or posting date, a brief description, or identification of each such purchase.

(c) The payments made by the buyer and any other credits to the buyer during the period.

(d) The amount, if any, of any time price differential for that period.

(e) A statement to the effect that the buyer at any time may pay the total unpaid balance or any part of that balance.

History: Add. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1204b Home improvement charge agreement; time price differential; lien on buyer's principal residence prohibited; attorney's fee.

Sec. 204b. (1) A home improvement charge agreement may provide for, and the contractor or holder may then charge, collect, and receive, a time price differential for the privilege of paying in installments under the agreement, in an amount not to exceed 1.2% of the unpaid balance per month. An agreement may further provide that if the interest rate paid at 2 successive auctions of 26-week United States treasury bills is 8% or more, then on a home improvement charge sale made after that date the time price differential shall not exceed 1.375% of the unpaid balance per month, but if the interest rate paid at 2 successive auctions of 26-week United States treasury bills falls below 8%, then the time price differential on a home improvement

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charge sale made after that date shall not exceed 1.2% of the unpaid balance per month, unless the interest rate paid at 2 successive auctions of 26-week United States treasury bills again is 8% or more, in which case the time price differential on a home improvement charge sale made after that date shall not exceed 1.375% of the unpaid balance per month. The time price differential under this subsection shall be computed on all amounts unpaid under the agreement from month to month, which need not be calendar months, or other regular periods. A minimum time price differential not in excess of 70 cents per month may be charged, collected, and received.

(2) The time price differential for purchases made under a home improvement charge agreement shall not be computed or imposed on an amount charged for the sale of goods or services until those goods or services have been delivered to the purchaser of the goods or services. If the time price differential is charged before delivery of the goods or services, the charges applied before the delivery date shall be adjusted upon the request of the purchaser in accordance with part D of title I of the federal consumer credit protection act, 15 U.S.C. 1666 to 1666j.

(3) A change in the rate of the time price differential charged pursuant to a home improvement charge agreement shall not apply to a balance incurred prior to the effective date of the change.

(4) An extension of credit under a home improvement charge agreement shall not be secured by a lien on the buyer's principal residence.

(5) A home improvement charge agreement may also provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney who is not a salaried employee of the holder of the home improvement charge agreement or an unpaid balance under the agreement, and for court costs.

History: Add. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1205 Home improvement installment contract; statement as to insurance.

Sec. 205. If the premium paid for group credit life or other insurance is included in the home improvement installment contract and a separate charge is made to the buyer for such insurance, the contract shall state whether the insurance is to be procured by the buyer or the contractor.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1206 Home improvement installment contract and home improvement charge agreement; prohibited provisions.

Sec. 206. (1) A home improvement installment contract or home improvement charge agreement shall not contain any provision by which:

(a) The buyer agrees not to assert against a contractor a claim or defense arising out of the home improvement installment sale or a home improvement charge sale or agrees not to assert against an assignee such a claim or defense.

(b) In the absence of the buyer's default in the performance of any of the buyer's obligations, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any or all of the amount owing thereunder.

(c) The buyer waives any right of action against the contractor or holder, or a person acting on his or her behalf, for any illegal act committed in the collection of payments under the contract or agreement.

(d) The buyer relieves the contractor from liability for any legal remedies which the buyer may have against the contractor under the contract or agreement or any separate instrument executed in connection with the contract or agreement.

(e) The contractor, or holder, or a person acting on his or her behalf, is authorized to enter upon the premises of the buyer unlawfully, or is authorized to commit any breach of the peace in connection with any repossession or other entry upon the premises of the buyer.

(f) The contractor is entitled to liquidated damages for any cancellation, rescission, or failure or refusal to accept delivery of the goods or performance of the services covered in the contract or provided pursuant to the agreement.

(2) Any provision prohibited under subsection (1) is void but shall not otherwise affect the validity of the contract or agreement.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1207 Evidence of obligation; holder subject to claims and defenses of buyer; limitation on buyer's recovery.

Sec. 207. Notwithstanding the provisions of any other law and notwithstanding any agreement to the contrary:

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(a) A person shall not take a negotiable instrument, other than a currently dated check or draft, as evidence of the obligation of the buyer in a home improvement installment sale or home improvement charge sale.

(b) A holder of a home improvement contract, home improvement charge agreement, or other evidence of indebtedness of the buyer is subject to all the claims and defenses of the buyer arising out of the home improvement installment sale or a home improvement charge sale, but the buyer's recovery shall not exceed the amount paid to the holder thereunder.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1972, Act 193, Eff. Jan. 1, 1973;—Am. 1980, Act 78, Imd. Eff. Apr. 3, 1980;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1208 Repealed. 1972, Act 193, Eff. Jan. 1, 1973.

Compiler's note: The repealed section pertained to assignments of home improvement installment contracts.

445.1209 Home improvement installment contract; provisions as to delinquency and collection charges, court costs and attorney fees.

Sec. 209. A home improvement installment contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5% of such installment or $5.00, whichever is less. Only 1 such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default. A contract may also provide for the payment of court costs actually incurred and of attorney's fees not exceeding 20% of the amount due and payable under such contract if the attorney is not a salaried employee of the contractor or holder for collection.

History: 1965, Act 332, Eff. Jan. 1, 1966.

PART 3

445.1301 Finance charges.

Sec. 301. (1) The maximum finance charge included in a home improvement installment contract payable in substantially equal successive monthly installments beginning 1 month from the date the finance charge accrues, shall not exceed $8.00 per $100.00 per annum. However, on a contract which is entered into before December 31, 1991, and which is entered into after the interest rate paid at 2 successive auctions of 26 week United States treasury bills is 8% or more, the finance charge may be equivalent to 16.5% interest or less per annum on the unpaid balance. If the interest rate paid at 2 successive auctions of 26 weeks United States treasury bills again falls below 8%, the finance charge on a contract entered into after that date shall not exceed $8.00 per $100.00 per annum, unless the interest rate paid at 2 successive auctions of 26 week United States treasury bills again is 8% or more, in which case the finance charge may be equivalent to 16.5% interest or less per annum on the unpaid balance. The finance charge shall be computed on the principal amount financed on the contract notwithstanding that the time balance is required to be paid in installments. The finance charge shall not accrue over a longer period than one which commences on the date of completion of the contract and ends on the date when the final installment is payable. For a period less or greater than 12 months or for amounts less or greater than $100.00, the amount of the maximum finance charge shall be increased o r decreased proportionately. A fractional monthly period of 15 days or more may be considered a full month. If the finance charge computed as above provided is less than $12.00, a minimum finance charge of $12.00 may be made.

(2) Subject to the limitations in subsection (3), if a contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the finance charge accrues from a date more than 1 month before the first installment is payable, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same yield as if the contract were payable in accordance with the standard payment terms stated in subsection (1).

(3) If the amount of any installment is 2 times or more the amount of any other installment except the down payment, the amount of the finance charge in respect to the portion of the principal amount financed included in such larger installment shall not exceed the equivalent of 6% per annum simple interest for the period from the due date on which finance charge begins to accrue to the date of such larger installment and such portion of the finance charge shall be payable in substantially equal periodic installments throughout such period.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1980, Act 406, Imd. Eff. Jan. 8, 1981;—Am. 1983, Act 13, Eff. Mar. 22, 1983;—Am. 1988, Act 429, Imd. Eff. Dec. 27, 1988.

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Compiler's note: Act 13 of 1983 was not signed by the Governor, but, having been presented to him at 11:21 a.m. on March 8, 1983, and not having been returned by him to the house in which it originated, became law at the expiration of the constitutional 14-day period, the Legislature having continued in session.

445.1302 Division of transaction prohibited.

Sec. 302. A contractor shall not induce or permit a buyer to split up or divide any transaction that otherwise would be a home improvement installment sale or home improvement charge sale for the purpose of qualifying for any exclusion under section 102(j), (*l*), or (m).

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1303 Payment of contract in full before maturity; refund credit.

Sec. 303. (1) Notwithstanding the provisions of a home improvement installment contract to the contrary, a buyer may pay the contract in full at any time before maturity and in so paying shall receive a refund credit on the contract, except as provided in section 309. Except as provided in subsection (2), the amount of the refund credit shall represent at least as great a proportion of the finance charge, or if the contract has been extended, deferred, or refinanced, of the additional charge therefor, as the sum of the periodical time balance scheduled by the contract to follow the installment date after the day of prepayment bears to the sum of all the periodical time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced.

(2) If a part of the finance charge is computed on an installment as provided in section 301(3), the amount of the refund credit applicable to that part of the finance charge shall represent at least as great a proportion of that part of the finance charge as the number of months to elapse after the month in which prepayment is made to the due date of that installment bears to the number of months from the date the finance charge accrues to the due date of that installment.

(3) Where the amount of the credit for anticipation of payment is less than $1.00, a refund need not be made. Where the earned finance charge amounts to less than the minimum finance charge, there may be retained an amount equal to the minimum finance charge under section 301.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1978, Act 96, Imd. Eff. Apr. 5, 1978.

445.1304 Scheduled payments; extension of due date; deferral charge.

Sec. 304. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of $1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than $1.00. The agreement may also provide for payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1305 Refinancing payment of unpaid balance; refinance charge, computation; refinancing agreement, consolidation of contracts.

Sec. 305. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinanced charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 303 if he had prepaid in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under section 301. The agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the maturity of the contract as refinanced, any insurance coverages provided therein. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be

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refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments. A refinancing agreement between a financing agency and a buyer may consolidate the new unpaid time balances of 2 or more home improvement installment contracts by providing for a new schedule of consolidated installment payments, and may provide for the acceleration of the consolidated time balance upon a failure of the buyer to pay in full any consolidated installment payment. A contractor may not consolidate 2 or more home improvement installment contracts except to the extent provided in sections 306, 307 and 308.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1306 Add-on sales; optional contract provisions; finance charges, insurance.

Sec. 306. A home improvement installment contract may provide that the contractor may at his option add to the contract subsequent home improvement installment sales made by such contractor to the buyer, and that the total time balance of the goods and services covered by the contract shall be increased by the principal amount financed under the subsequent sale or sales, and that all finance charges and installment payments may, at the contractor's option, be increased proportionately and that all terms and conditions of the contract shall apply equally to such sale or sales. In addition, the contract may provide for the payment by the buyer of the additional cost of premiums for continuing in force, until the due date of the final installment of the consolidated time balance, any insurance coverages provided for therein. The minimum finance charge as provided in section 301 may be used but once in any series of add-on home improvement installment sales.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1307 Finance charge; computation, maximum sale.

Sec. 307. Subject to the provisions of section 301, the finance charge to be included in a consolidated time balance shall be determined by applying a finance charge at a rate not exceeding the maximum rate specified in that section to either:

(a) The total of the principal amount financed under the subsequent sale and the unpaid balance of any previous contract determined by deducting from the unpaid time balance thereof as of the date the finance charge is to accrue on the subsequent sale, any then unearned finance charge in an amount not less than the refund credit provided for in section 303 computed without the allowance of any minimum earned finance charge, for the period from the date the finance charge is to accrue on the subsequent sale to and including the date when the final installment of such consolidated time balance is payable; or

(b) The principal amount financed under the subsequent sale for the period from the date the finance charge is to accrue thereon to and including the date when the final installment of such consolidated time balance is payable and, if the due date of the final installment of such consolidated time balance is later than the due date of the final installment of any previous contract included in the consolidated time balance, on the unpaid time balance of such previous contract as of the date the finance charge is to accrue on the subsequent sale for the period from the date when the final installment on the previous contract would have been payable to the date when the final installment of such consolidated time balance is payable.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1308 Subsequent sale; memorandum, contents.

Sec. 308. When a subsequent home improvement installment sale is made, the contractor shall deliver to the buyer, at the time the contract is executed, a memorandum which shall set forth the following with respect to the subsequent sale:

(a) The name and place of business of the contractor, the name and address of the buyer, as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

(b) The cash price of the goods and services which are the subject matter of the subsequent sale.

(c) The amount of the buyer's down payment, in respect of the subsequent sale, itemizing any allowance given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The unpaid cash balance which is the difference between item (b) and item (c).

(e) The premium paid for each type of insurance, if any, included in the subsequent sale for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer and a brief description of each type of coverage and the term thereof.

(f) The amount of official fees, if any, in respect of the subsequent sale.

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(g) The principal amount financed in respect of the subsequent sale which is the sum of items (d), (e) and (f).

(h) The unpaid time balance of the prior contract or contracts.

(i) The amount of any refund credit in respect of the prior contract or contracts.

(j) Item (h) less item (i).

(k) The premiums paid for any additional insurance and the cost of official fees in respect of the prior contract or contracts, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(*l*) The total principal amount financed, which is the sum of items (g), (j) and (k).

(m) The amount of the finance charge expressed in dollars.

(n) The consolidated time balance, which is the sum of items (*l*) and (m), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(o) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or typewritten and underlined: This contract ("memorandum") is not payable in installments of equal amounts.

Followed, if there be but one larger installment by:

An installment of $..... will be due on ....., or if there be more than 1 larger installment, by: Larger installments will be due as follows: ..... (insert the amount or amounts of every larger installment and its due date).

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. The memorandum need not make any reference to items (e), (f) or (k) if a charge for the item is not included. The memorandum shall contain the statement that the contractor is adding the subsequent home improvement installment sale to the buyer's existing contract in accordance with the provisions thereof. Until the contractor delivers to the buyer the memorandum as provided in this section, the buyer shall not be obligated to pay any installment due.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1309 Optional method of computing finance charge.

Sec. 309. Instead of a finance charge computed on the principal amount financed as determined under section 203 or 308, the seller may charge from time to time a finance charge consisting of interest on the amount of the unpaid principal balance of the contract. In this event, the transaction shall be subject to this act as modified by the following provisions:

(a) Finance charge shall mean the estimated amount of consideration in excess of the cash price which the buyer will pay in the form of interest assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(b) The maximum estimated finance charge shall not exceed the maximum dollar amount allowed pursuant to section 301 for contracts of the same contractual maturity computed on the actual number of days between installment payments.

(c) The number and amount of installment payments required to be stated pursuant to sections 203 and 308 shall be estimated for purposes of this section assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(d) The holder of the contract shall have the option of deferring interest charges which accrue due to installment payments being received later than the periodic installment due date. The deferred interest charge shall be computed on the basis of additional interest charges accruing for late installment payments and appropriate interest reductions for installment payments made before the due date. On contracts providing for equal monthly installments, if the final installment is more than 105% of a previous installment as a result of the deferred interest charges, the installment buyer shall be given the option to pay the deferred interest charges not less than 25 days after the date the last installment payment is due.

(e) If the entire principal balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original finance charge shall be canceled and the provisions of section 303 respecting a refund credit shall not be applicable.

History: Add. 1978, Act 96, Imd. Eff. Apr. 5, 1978.

PART 4

445.1401 Notice of assignment of contract or agreement.

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Sec. 401. Unless the buyer has notice of the actual or intended assignment of a home improvement installment contract or home improvement charge agreement, payment under the contract or agreement by the buyer to the last known holder of the contract or agreement is binding upon all subsequent holders or assignees.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1402 Statement of payments; furnished by holder, fee.

Sec. 402. At any time after its execution, but not later than 1 year after the last payment thereunder, the holder of a home improvement installment contract, upon written request of the buyer, shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. The statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply each statement to the buyer at a charge not exceeding $1.00 for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1403 Payment in full; acknowledgment, release of collateral.

Sec. 403. After the payment of all sums for which the buyer is obligated under a home improvement installment contract and upon demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such 1 or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all collateral.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1404 Compensation or reward for procurement of contract or agreement prohibited; giving tangible items for advertising or sales promotion purposes.

Sec. 404. (1) As part of or in connection with the inducement to make a home improvement installment contract or home improvement charge agreement, a person shall not promise or offer to pay, credit, or allow to a buyer any compensation or reward for the procurement of a home improvement installment contract or home improvement charge agreement with others.

(2) A person shall not offer, deliver, pay, credit, or allow to the buyer any gift, bonus, award, merchandise, or cash loan as an inducement to enter into a home improvement installment contract or to make a purchase under a home improvement charge agreement.

(3) A contractor or financing agency may give tangible items to prospective buyers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a home improvement installment contract or making a purchase under a home improvement charge agreement, but such item shall not have a cost value in excess of $2.50 and a buyer or other person shall not receive more than 1 such item in connection with any 1 sale.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1405 Criminal violation of act by personnel deemed violation by contractor; exception.

Sec. 405. A criminal violation of any of the provisions of this act by a director, manager, partner, officer, salesman, agent or employee of a contractor or financing agency is deemed a criminal violation by such contractor or financing agency, unless it shall appear that the individuals engaged in the management of the contractor or financing agency had no actual or constructive knowledge of the wrongful conduct or was reasonably unable to prevent the violation.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1406 Unauthorized charges.

Sec. 406. A person shall not charge, collect, or receive from a buyer, directly or indirectly, any further or other amount for costs, credit investigation charges, insurance premiums, examination, appraisal, service, brokerage, commission, interest, discount, expense, fee, fine, penalty, or other thing of value in connection with a home improvement installment contract, home improvement charge agreement, or home improvement charge sale, other than the charges authorized by this act. Any such unauthorized charge shall be unenforceable. Any payment of an unauthorized charge shall be applied to the next maturing installment, or, if a contract has been fully paid or a balance is not owing under an agreement, shall be remitted to the buyer and the buyer shall be entitled to recover all such unauthorized charges.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

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445.1407 Cash loans.

Sec. 407. A cash loan shall not directly or indirectly be included in or combined or consolidated with any home improvement installment contract, home improvement charge sale, or home improvement charge agreement, or with any extension, deferment, refinancing, add-on, or consolidation agreement pertaining thereto.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1409 Waiver.

Sec. 409. No act, agreement, or statement of a buyer under a home improvement installment contract or home improvement charge agreement constitutes a valid waiver of any provision of this act intended for the benefit or protection of the buyer.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1410 Effect of act as to prior contracts.

Sec. 410. This act does not apply to or affect the validity of a home improvement installment contract otherwise within the purview of this act, which is made prior to the effective date of the respective provisions of this act governing such contracts.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1421 Violation of act; misdemeanor, penalty.

Sec. 421. Any person who wilfully violates any provision of this act or directs or consents to such violation, is guilty of a misdemeanor and, upon conviction thereof, may be punished by imprisonment in the county jail for a period not to exceed 90 days and may be fined not more than $500 or both for the first offense; and for each subsequent offense a like fine or imprisoned not to exceed 1 year, or both. Violation of any order, decree or injunction issued pursuant to the provisions of this act shall constitute prima facie proof of a violation of this section.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1422 Violation of act; injunction; violation of injunction, civil penalty.

Sec. 422. (1) The attorney general or the prosecuting attorney of any county may bring an action in the name of the state to restrain or prevent any violation of this act or any continuance of any such violation. Such action, in the case of the attorney general, shall be brought in the circuit court of Ingham county, upon which jurisdiction thereof is conferred, and, in the case of the prosecuting attorney, in the county where the defendant resides, has his principal place of business, or where the act sought to be restrained has been, or is about to be, performed.

(2) A person who violates any order or decree entered, or injunction issued, pursuant to subsection (1) is liable to a civil penalty of not more than $1,000.00, in the discretion of the court, to be recovered as judgments are now by law recovered. For the purpose of this section, the circuit court entering any order or judgment, or issuing any injunction, under the provisions of this section may retain jurisdiction, and the cause may be continued.

(3) Any penalty directed to be paid under the provisions of this section shall be in addition to any penalty which may be imposed under the provisions of section 421.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1431 Effective date of act.

Sec. 431. This act shall take effect January 1, 1966.

History: 1965, Act 332, Eff. Jan. 1, 1966.

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FARM AND UTILITY EQUIPMENT ACT
Act 341 of 1984

AN ACT to provide for the compensation for or repurchase of certain farm tractors, attachments, equipment, and utility tractors and equipment by certain manufacturers or suppliers subject to certain dealer, wholesaler, or distributor agreements; to provide for the repurchase of certain repair parts; to impose certain duties and responsibilities on certain persons; and to provide certain remedies.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

The People of the State of Michigan enact:

445.1451 Short title.

Sec. 1. This act shall be known and may be cited as the "farm and utility equipment act".

History: 1984, Act 341, Imd. Eff. Dec 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990.

445.1452 Definitions.

Sec. 2. As used in this act unless the context clearly requires otherwise:

(a) "Attachments" means machinery or any part of a piece of machinery designed to be used on or in conjunction with farm tractors, farm equipment, utility tractors, and utility equipment.

(b) "Current net price" means the price listed in the supplier's printed price lists, catalogs, microfiche, price tapes, invoices, or any other printed or electronically recorded data in effect at the time an agreement is canceled or discontinued, less all applicable discounts.

(c) "Dealer" means a person engaged in the business of the retail sale of farm tractors and equipment, utility tractors and equipment, or the attachments to or repair parts for that equipment. Dealer includes retail dealers, wholesalers, and distributors that obtain inventory from another person for resale.

(d) "Equipment" means motorized machines designed for or adapted and used for agriculture, horticulture, livestock raising, forestry, grounds maintenance, lawn and garden, construction, materials handling, and earth moving.

(e) "Agreement" means a written, oral, or implied contract, sales agreement, security agreement, or franchise agreement between a supplier and a dealer by which the dealer is authorized to engage in the business of the retail sale and service, wholesale sale and service, or the distribution of tractors and equipment as an authorized outlet of the supplier or in accordance with methods and procedures provided for or prescribed by the supplier.

(f) "Inventory" means farm tractors, utility tractors, equipment, and accessories for attachments to and repair parts for those tractors and that equipment.

(g) "Net cost" means an amount equal to the original invoice price that the dealer paid for the merchandise to the supplier, less all applicable discounts allowed and received, plus the freight cost incurred by the dealer from the location of the supplier to the location of the dealer.

(h) "Person" means a sole proprietorship, partnership, corporation, or any other form of business organization.

(i) "Supplier" means a manufacturer, wholesaler, or distributor of farm and utility tractors and farm and utility equipment, or the attachments to or repair parts for that equipment. Supplier includes any component member of a controlled group of corporations of which a supplier is a component member, or a successor in interest of a supplier, including any person who or which acquires more than 25% of the assets, stock, good will, or trade name of a supplier, any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of a supplier.

(j) "Usage for demonstration" means usage, not prohibited by an agreement, to demonstrate the function of equipment or inventory to potential customers, but does not include use by a buyer who subsequently rescinds the purchase of the inventory or equipment.

(k) "Usage for rental" means usage by a customer of the dealer, not prohibited by the agreement, under a rental contract or nonfinancing lease.

(*l*) "Dealer supplies" means any display, machinery, signage, book, manual, computer, microfiche, microfilm, communication device, or tool that a dealer purchased from a supplier, or from a third party upon the request or requirement of the supplier, and which is used by the dealer to facilitate the sale or repair of inventory furnished by the supplier and no other product line sold or serviced by the dealer.

(m) "Controlled group of corporations" means any of the following:

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(*i*) A parent-subsidiary controlled group.

(*ii*) A brother-sister controlled group.

(*iii*) A combined group.

(*iv*) A group having constructive ownership of 1 or more corporations.

(n) "Parent-subsidiary controlled group" means 1 or more chains of corporations connected through stock ownership with a common parent corporation if all of the following exist:

(*i*) Stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is directly owned by 1 or more of the other corporations or stock subject to constructive ownership by the corporation.

(*ii*) The common parent corporation owns or has constructive ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of stock of at least 1 of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(o) "Brother-sister controlled group" means 2 or more corporations if 5 or fewer persons who are individuals, estates, or trusts own or have constructive ownership of stock possessing both of the following:

(*i*) At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation.

(*ii*) More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(p) "Combined group" means 3 or more corporations each of which is a member of a parent-subsidiary controlled group or a brother-sister controlled group and 1 of which is both of the following:

(*i*) Is a common parent corporation included in a parent-subsidiary controlled group.

(*ii*) Is included in a brother-sister controlled group.

(q) "Constructive ownership" means any or all of the following:

(*i*) A person who has an option to acquire stock. For purposes of this subparagraph, an option to acquire is an option, and each 1 of a series of such option, is considered an option to acquire such stock.

(*ii*) Stock owned, directly or indirectly, by or for a partnership. Constructive ownership includes ownership by any partner having an interest of 5 % or more in either the capital or profits of the partnership in proportion to his or her interest in capital or profits, whichever such proportion is the greater.

(*iii*) Stock owned, directly or indirectly, by or for an estate or trust. Constructive ownership includes ownership by any beneficiary who has an actuarial interest of 5% or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his or her rights as a beneficiary.

(r) "Consumer warranty" means the promise of a supplier to repair or replace any inventory after the inventory is sold or leased by a dealer.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1453 Repurchase of inventory on termination of agreement; election to keep inventory.

Sec. 3. If a dealer enters into an agreement with a supplier and the agreement is subsequently terminated, the supplier shall repurchase any inventory of the dealer as provided in this act. The dealer may choose to keep the inventory if there exists a contractual right to do so.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1454 Repurchase amount; handling, packing, and loading; effect of payment; subtraction of debts; shipment; undeliverable or unaccepted goods; notice of intent to return; duties of supplier; duties of escrow agent; warranty claims.

Sec. 4. (1) The supplier shall pay 100% of the net cost of all undamaged and complete tractors, equipment, and attachments, which were purchased within 30 months of the termination of the agreement, less an allowance for usage for demonstration or usage for rental, provided the dealer's demonstration and rental programs are not in conflict with the supplier's agreement or written policies, and 90% of the current net price of all new, unused, and undamaged repair parts. The supplier shall pay the dealer 5% of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading.

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The supplier may perform the handling, packing, and loading in lieu of paying the 5% for services.

(2) The supplier shall purchase or repurchase, at the dealer's book value net of depreciation on the date of termination, all dealer supplies, except that:

(a) No electronic device more than 5 years old is required to be purchased.

(b) The supplier shall assume the dealer's lease obligations with respect to any dealer supplies that are leased.

(c) The supplier shall pay the dealer at least 75% of the supplier's net price last published for any new dealer supplies purchased from the supplier.

(d) No specialized repair tool that is not complete and in usage condition is required to be purchased.

(3) Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.

(4) The supplier may subtract from the sums due under subsection (1) or (2) the amount of debts owed by the dealer to the supplier.

(5) With or without the prior consent or authorization of a supplier, a dealer may ship all inventory suitable for repurchase to the supplier, not less than 60 days after the supplier has notified the dealer, or the dealer has notified the supplier by certified mail, that the agreement between them has been terminated. The supplier shall inspect a dealer's inventory within 30 days of termination of the agreement and designate portions of that inventory to be not returnable under this act. However, such a designation received by the dealer more than 30 days after the termination is not effective.

(6) Not more than 90 days from the termination of the agreement, the dealer may ship inventory to any location from which inventory of like kind has been shipped to the dealer in the 12 months preceding the shipment, or if no shipment of such type of inventory has occurred in that time period, to any place of business maintained by the supplier. Freight to such destination shall be paid by the dealer. The supplier shall accept a shipment made pursuant to this subsection.

(7) If a properly shipped shipment is undeliverable, or not accepted by the supplier, the dealer may order the inventory returned, may order it stored for the supplier's account, or may order it liquidated or abandoned by the carrier. All risk of loss to properly shipped but undeliverable or unaccepted goods is the supplier's, including, but not limited to, losses from exposure, liquidation, abandonment, or theft. A supplier's acceptance of a shipment does not constitute an admission that the inventory inspected by the supplier before shipment pursuant to subsection (5) and declared not returnable must be repurchased, but that all properly shipped inventory that is not deliverable or not accepted is considered to have been properly submitted for repurchase, and the supplier is liable to pay the repurchase amount for that inventory.

(8) Instead of the return of the inventory to the supplier under the terms of subsection (7), a dealer may notify a supplier by certified mail that the dealer has inventory that the dealer intends to return. The notice of the dealer's intention to return shall be in writing, sworn to before a notary public as to the accuracy of the listing of inventory and the suitability of the items for repurchase. The notice shall include the name and business address of the person or business who has possession and custody of the inventory and the location where the inventory may be inspected and the list of inventory may be verified. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the machinery and parts to the supplier. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf regarding the activities described in this subsection. The escrow agent shall be a person or business that is independent of the dealership, dealer principal, or any employees of the dealership or supplier.

(9) The supplier has 30 days from the date of the mailing of the notice described in subsection (8) in which to inspect the inventory and verify the accuracy of the dealer's list. The supplier shall, within 10 days after inspection, do 1 of the following:

(a) Pay the escrow agent.

(b) Give evidence that a credit to the account of the dealer has been made if the dealer has outstanding sums due the supplier.

(c) Send to the escrow agent a credit list and shipping labels for the return of the inventory to the supplier that are acceptable as returns.

(10) If the supplier sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with subsection (9) for the acceptable returns shall accompany the credit list. Upon receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to the inventory acceptable as returns passes to the supplier making the payment or allowing the credit and the supplier is entitled to keep the inventory. The escrow agent shall ship or cause to be shipped the inventory acceptable as returns to the supplier unless the supplier elects to personally perform the inventorying, packing, and loading.

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(11) When the inventory has been received by the supplier, notice of the receipt of the inventory shall be sent by certified mail to the escrow agent who shall then disburse 90% of the payment he or she has received, less its actual expenses and a reasonable fee for his or her services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until he or she is notified that an agreement has been reached as to the nonreturnables, after which the escrow agent shall disburse the remaining funds and dispose of any remaining inventory as provided in the settlement.

(12) Whenever an agreement provides for a dealer to service consumer warranties by repairing, returning, or replacing inventory, the supplier shall pay any warranty claim made by or through the dealer for warranty parts or service within 90 days after the notice of termination of the agreement. If a claim is not specifically disapproved in writing during the 90-day period after notice of termination of an agreement, stating in detail the reasons for the disapproval, the claim shall be considered approved and the supplier shall pay the dealer for all parts and service applied to the servicing of the warranty claim.

(13) If a warranty claim is approved or considered approved under subsection (12) but repairs are not made, the supplier is not obligated to pay the dealer. However, the supplier shall accept for return by the dealer any inventory purchased, received, or set aside by the dealer for servicing of the claim unless, while in the possession of the dealer, the inventory has ceased to be in appropriate condition for return.

(14) Inventory in possession of a supplier and identified to a warranty claim made by or through a dealer on the date of the notice of termination of the agreement may be shipped by the supplier, at the dealer's option, provided that if the dealer directs the supplier to ship the inventory after notice of termination of the agreement, that inventory shall not be returnable.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1455 Provisions supplemental; election of remedies; effect of electing contract remedy; charge back.

Sec. 5. (1) The provisions of this act are supplemental to any agreement between the dealer and the supplier governing the return of inventory and the dealer may elect to pursue either a contract remedy or the remedy provided in this act. With respect to a dealer located in this state, a remedy provided for in this act shall not be limited by any agreement or contract between a supplier and a dealer.

(2) An election by the dealer to pursue a contract remedy does not bar the right of the dealer to the remedy provided in this act as to that inventory not affected by pursuit of the contract remedy.

(3) Notwithstanding anything contained in this act, the rights of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of the inventory repurchased shall not be affected.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1456 Exceptions to repurchase requirement.

Sec. 6. The provisions of this act shall not require the repurchase of the following by a supplier from a dealer:

(a) Any perishable repair part included in a list of parts with shelf lives published by the supplier and provided to the dealer before termination, the shelf life of which has elapsed before the termination, or which shows evidence of deterioration.

(b) Any single repair part that is priced as, or is only sold as, a set of 2 or more items.

(c) Any repair part that, because of its condition, is not resalable as a new part.

(d) Any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of title free and clear of all claims, liens, and encumbrances.

(e) Any inventory that the dealer chooses to keep and has a contractual right to keep.

(f) Any farm tractors and equipment, utility tractors and equipment, and equipment, or attachments that are not in new, unused, undamaged, complete, and salable condition. This subdivision does not apply to those resalable items described in section 4(1) that were used for demonstration or rental.

(g) Any farm tractors and equipment, utility tractors and equipment, or attachments purchased 30 or more months prior to notice of termination of the contract.

(h) Any inventory that was ordered by the dealer on or after the date of notification of termination of the contract.

(i) Any inventory that was acquired by the dealer from any source other than the supplier.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June

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20, 1995.

445.1457 Liability of supplier or manufacturer failing or refusing to pay or credit account of dealer; right of dealer to bring action.

Sec. 7. (1) If any supplier fails or refuses to pay or credit the account of the dealer for any inventory required to be repurchased by section 3 within 90 days after receipt by the supplier of that inventory, he or she shall be liable for 100% of the net cost of all tractors, equipment, and attachments returned or the current net price of all repair parts returned plus any freight charges paid by the dealer and interest on the current net price computed at the legal interest rate from the sixty-first day after receipt of the inventory.

(2) A dealer located in this state shall not waive his or her right to bring any action under this act in the courts of this state. A dealer is not, by virtue of entering into an agreement with a supplier in another state, considered to be doing business in the other state. An action arising under provisions of this act shall be brought in the circuit court of the county in which the dealer has its principal place of business in Michigan.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1457a Notice of termination, cancellation, nonrenewal, or substantial change in competitive circumstances.

Sec. 7a. (1) A supplier shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of an agreement without good cause. A supplier shall provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice shall state the reasons or deficiencies for the action, and the dealer has 90 days to submit a plan to correct the stated reasons or deficiencies that is acceptable to the supplier or to correct the stated reasons or deficiencies. Failure by a dealer to comply with the requirements imposed upon the dealer by the supplier's agreement shall be cause for termination, provided the requirements are not different from those requirements imposed by the supplier on other similarly situated equipment dealers within the state.

(2) The notice described in subsection (1) shall state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and shall provide that the dealer has 90 days in which to rectify any claimed deficiency. If a plan to rectify is submitted or the deficiency is rectified within 90 days, the notice is considered void.

(3) The notice provisions of this section shall not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or material misrepresentation and falsification of records. If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the agreement, the dealer shall be entitled to written notice of default in payment and shall have 10 days from the date of delivery of posting of the notice in which to remedy the default. A supplier shall be liable to a dealer for damages caused to the dealer by the supplier's breach of subsection (1).

History: Add. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1458 Death of dealer or majority stockholder or partner; options of heirs; time limitation; new franchise agreement.

Sec. 8. (1) Upon the death of the dealer or the majority stockholder of a corporation or a partner in a partnership operating as a dealer, the supplier shall, at the option of the heirs, repurchase the inventory from the surviving spouse or the heir or heirs of the dealer or majority stockholder as if the contract had been terminated.

(2) The heir or heirs shall have 200 days from the date of the death of the dealer or majority stockholder to exercise their options under this act. The repurchase of an inventory is not required if the heirs or the supplier enter into an agreement to operate the dealership, wholesale business, or distributorship on substantially similar terms to those of the deceased dealer.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

445.1459 Security interest in inventory not affected.

Sec. 9. The provisions of this act shall not be construed to affect in any way any security interest that any financial institution, person, or supplier has in the inventory of the dealer.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995;—Am. 2000, Act 357, Eff. Mar. 28, 2001.

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445.1460 Applicability of act.

Sec. 10. The provisions of this act shall apply to all agreements, contracts, sales agreements, security agreements, or franchise agreements written or implied in force and effect on or after January 2, 1990.

History: 1984, Act 341, Imd. Eff. Dec. 27, 1984;—Am. 1989, Act 296, Imd. Eff. Jan. 3, 1990;—Am. 1995, Act 86, Imd. Eff. June 20, 1995.

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FRANCHISE INVESTMENT LAW
Act 269 of 1974

AN ACT to regulate the offer, sale, and purchase of franchises; to prohibit fraudulent practices in relation thereto; to prohibit pyramid and chain promotions; to impose regulatory duties upon certain state departments and agencies; and to provide penalties.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

The People of the State of Michigan enact:

445.1501 Short title; construction.

Sec. 1. This act shall be known and may be cited as the "franchise investment law". This act shall be broadly construed to effectuate its purpose of providing protection to the public.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1502 Definitions.

Sec. 2. (1) "Advertisement" means a written or printed communication or a communication by means of recorded telephone message or spoken on radio, television, or similar communications media, published in connection with an offer or sale of a franchise.

(2) "Department" means the department of attorney general.

(3) "Franchise" means a contract or agreement, either express or implied, whether oral or written, between 2 or more persons to which all of the following apply:

(a) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor.

(b) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

(c) The franchisee is required to pay, directly or indirectly, a franchise fee.

(4) "Franchisee" means a person to whom a franchise is granted.

(5) "Franchisor" is a person who grants a franchise and includes a subfranchisor.

(6) "Area franchise" means a contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor; unless specifically stated otherwise, franchise includes area franchise.

(7) "Subfranchisor" is a person to whom an area franchise is granted.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1503 Additional definitions; burden of proof.

Sec. 3. (1) "Franchise fee" means a fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including but not limited to payments for goods and services. The following are not the payment of a franchise fee:

(a) The purchase or agreement to purchase goods, equipment, or fixtures directly or on consignment at a bona fide wholesale price.

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring the credit card.

(c) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or service.

(d) Payments made in connection with the lease or agreement to lease of a franchised business operated by a franchisee on the premises of a franchisor as long as the franchised business is incidental to the business conducted by the franchisor at such premises.

(2) "Fraud" and "deceit" are not limited to common law fraud or deceit.

(3) "Offer" or "offer to sell" includes an attempt to offer to dispose of or solicitation of an offer to buy, a franchise or interest in a franchise for value. The terms defined in this act do not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee.

(4) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the department.

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(5) “Person” means an individual, corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.

(6) “Publish” means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(7) “Rule” means a rule promulgated by the department.

(8) “Sale” or “sell” includes a contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(9) “State” means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(10) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1504 Arrangements between franchisor and franchisee to which act applicable; making offer or sale of franchise in state; accepting offer to sell in state; communication of acceptance.

Sec. 4. (1) This act applies to all written or oral arrangements between a franchisor and franchisee in connection with the offer or sale of a franchise, including, though not limited to, the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interests, pledges, insurance, advertising, construction or installation contracts, servicing contracts, and all other arrangements in which the franchisor or subfranchisor has an interest.

(2) An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(3) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. An acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(4) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation which has had more than 2/3 of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1504a Applicability of act.

Sec. 4a. This act shall not apply to a nonprofit organization operated on a cooperative basis by and for independent retailers to which all of the following apply:

(a) Control and ownership of each member is substantially equal.

(b) Membership is limited to those who use the services furnished by the organization.

(c) Transfer of ownership is prohibited or limited.

(d) Members receive no return on capital investment.

(e) Substantially equal economic benefits pass to the members on the basis of patronage in the organization.

(f) Members are not personally liable for obligations of the organization in the absence of a direct undertaking or authorization by the members.

(g) The wholesale goods and services of the organization are furnished primarily to the members.

(h) No part of the receipts, income, or profit of the organization are paid to any profit-making entity except for arms-length payments for necessary goods and services.

(i) Members are not required to purchase goods or services through any profit-making entity.

History: Add. 1989, Act 212, Imd. Eff. Nov. 13, 1989.

445.1505 Prohibited conduct in connection with offer, sale, or purchase of franchise.

Sec. 5. A person shall not, in connection with the filing, offer, sale, or purchase of any franchise, directly or indirectly:

(a) Employ any device, scheme, or artifice to defraud.

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

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(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1505a Franchise opportunities handbook.

Sec. 5a. The department, in cooperation with the Michigan consumers council, shall prepare and make available to an interested agency or person a franchise opportunities handbook containing information to be used by a potential franchisee in evaluating a franchise offering.

History: Add. 1984, Act 92, Eff. June 20, 1984.

445.1506 Exemption of offer and sale of franchise from §§ 445.1507a and 445.1508; circumstances; compliance with § 445.1508.

Sec. 6. (1) Except as provided in subsection (2), the offer and sale of a franchise is exempt from sections 7a and 8 if any of the following circumstances apply:

(a) The transaction is by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(b) The offer or sale is to a bank, savings institution, trust company, insurance company, investment company, or other financial institution, association, or institutional buyer or to a broker-dealer where the purchaser is acting for itself or in some fiduciary capacity.

(c) The prospective franchisee is required to pay, directly or indirectly, a franchisee fee which does not exceed $500.00.

(d) The offer or sale is to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this state and where the franchise business will not be operated in this state.

(e) There is an extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship.

(f) The offer or sale of a franchise by a franchisee for the franchisee's own account, if all of the following conditions are met:

(*i*) The sale is an isolated sale, and not part of a plan of distribution of franchises.

(*ii*) The franchisee provides to the prospective purchaser full access to the books and records related to the franchise in actual or constructive possession of the franchisee.

(g) The offer or sale of a franchise to an existing franchisee if all of the following conditions are met:

(*i*) The existing franchisee is the person or persons who has actively operated the franchise for the last 18 months.

(*ii*) The franchisee purchases for investment and not for the purpose of resale.

(h) The transaction complies with all of the following:

(*i*) The prospective franchisee is presently engaged in an established business of which the franchise will become a component.

(*ii*) An individual directly responsible for the operation of the franchise, or a person involved in the management of the prospective franchise, including but not limited to a director, executive officer, or partner has been directly or indirectly engaged in the type of business represented by the franchise relationship for at least 2 years.

(*iii*) The parties have reasonable grounds to believe, at the time the sale is consummated, that the franchisee's gross sales in dollar volume from the franchise will not represent more than 20% of the franchisee's gross sales in dollar volume from all of the franchisee's combined business operations.

(2) If the franchisor has a disclosure statement in compliance with the laws of any state or rule of the federal trade commission, the franchisor shall comply with section 8.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1507 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to conditions to exemption under § 445.1506(1).

445.1507a Notice required prior to offering for sale or selling franchise; fee; form and contents of notice; indorsement, return, and duration of notice; effect of compliance; penalty for failure to file notice; duty of franchisor with effective registration or exemption from registration; validity and enforceability of franchise documents; written notice of filing date and penalties; failure to notify franchisor.

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Sec. 7a. (1) Prior to offering for sale or selling a franchise in this state, a person annually shall file a notice with the department along with the fee required in section 40. The form of the notice shall be prescribed by the department and shall require only the name of the franchisor; the name under which the franchisor intends to do business; and the franchisor's principal business address.

(2) Upon receipt of a notice, the department shall indorse upon the notice the word “filed” and the date, and shall return the copy to the person who filed the notice. The notice shall be effective for a period of 1 year from the date of filing.

(3) Upon compliance with this section and the other requirements of this act, a person may lawfully offer and sell a franchise in this state.

(4) Failure to file the notice required in subsection (1) shall be punishable by a civil fine of not more than $100.00 for the first day a franchise is offered and each following day until the notice is filed.

(5) A franchisor with an effective registration or exemption from registration on June 20, 1984 shall be considered to have filed the notice required under this section and, upon compliance with the other requirements of this act, may lawfully offer and sell a franchise in this state. A franchisor described in this subsection shall file annually the notice required in subsection (1) at the time prior to June 20, 1984 the franchisor was required to file its registration renewal statement.

(6) Franchise documents containing provisions that were lawful before June 20, 1984, which documents contain provisions made void and unenforceable under section 27, shall be valid and enforceable until the first annual filing by the franchisor after June 20, 1984.

(7) Within 60 days of the date a franchisor is required to file his or her notice as provided in subsection (1), the department shall notify in writing the franchisor of the date by which the notice must be filed and the penalties for failure to file.

(8) Failure by the department to notify the franchisor as required by subsection (7) shall not relieve the franchisor from the requirement of complying with all of the provisions of this act.

History: Add. 1984, Act 92, Eff. June 20, 1984;—Am. 1989, Act 213, Imd. Eff. Nov. 13, 1989.

445.1508 Prospective franchisee to be provided copy of disclosure statement, notice, and proposed agreements; form and contents of disclosure statement; location and contents of notice.

Sec. 8. (1) A franchise shall not be sold in this state without first providing to the prospective franchisee, at least 10 business days before the execution by the prospective franchisee of any binding franchise or other agreement or at least 10 business days before the receipt of any consideration, whichever occurs first, a copy of the disclosure statement described in subsection (2), the notice described in subsection (3), and a copy of all proposed agreements relating to the sale of the franchise.

(2) The disclosure statement required in subsection (1) may be in the form of a disclosure statement required by a federal or state government agency, or a disclosure statement approved by an association of state regulatory agencies, which the department determines by rule or order to encompass disclosure requirements similar to those in this subsection, or may be a disclosure statement that shall contain all of the following:

(a) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of the parent or affiliated company that will engage in business transactions with franchisees.

(b) The franchisor's principal business address and the name and address of its agent in this state authorized to receive process.

(c) The business form of the franchisor, whether corporate, partnership, or otherwise.

(d) The information concerning the identity and business experience of persons affiliated with the franchisor, as the department may prescribe.

(e) A statement whether any person identified in the disclosure statement:

(*i*) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(*ii*) Is subject to a currently effective order of the United States securities and exchange commission or the securities administrator of a state denying registration of, or barring or suspending the registration or license of, the person as a securities broker, dealer, securities agent, or registered representative or investment advisor or is subject to a currently effective order of a national securities association or national securities exchange, as defined in the securities exchange act of 1934, suspending or expelling the person from membership in the association or exchange.

(*iii*) Is subject to a currently effective order or ruling of the federal trade commission.

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(*iv*) Is subject to a currently effective injunctive or restrictive order relating to business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesperson. The statement shall set forth the court, date of conviction or judgment, the penalty imposed or damages assessed, or the date, nature, and issuer of the order.

(f) The length of time the franchisor has conducted a business of the type to be operated by the franchisees, has granted franchises for the business, and has granted franchises in other lines of business.

(g) A recent financial statement of the franchisor, together with a statement of material changes in the financial condition of the franchisor from the date thereof. The department may prescribe the form and content of financial statements required under this act and the circumstances under which consolidated financial statements shall be filed. If a financial statement audited by independent certified public accountants is available, that audited financial statement shall be a part of the disclosure statement.

(h) A copy of the typical current franchise contract or agreement proposed for use or in use in this state, including all amendments thereto.

(i) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

(j) A statement describing payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

(k) A statement of the conditions under which the franchise agreement may be terminated or renewal refused or repurchased at the option of the franchisor.

(*l*) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or the franchisor's designee services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business, together with a description, and the terms and conditions thereof.

(m) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by the franchisee to customers.

(n) A statement of the terms and conditions of a financing arrangement when offere d directly or indirectly by the franchisor or an agent or affiliate of the franchisor.

(o) A statement of past or present practice or of intent of the franchisor to sell, assign, or discount to a third party a note, contract, or other obligation of the franchisee or subfranchisor in whole or in part.

(p) A copy of a statement, if any, of estimated or projected franchisee earnings prepared for presentation to prospective franchisees or subfranchisors, or other persons, together with a statement setting forth the data upon which the estimation or projection is based.

(q) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of the public figure in the name or symbol of the franchise or the indorsement or recommendation of the franchise by the public figure in advertisements.

(r) A statement of the total number and location of franchises presently operating and the proposed total to be sold in this state.

(s) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.

(t) Other relevant information as the franchisor may desire to present.

(3) The notice required in subsection (1) shall be on a separate sheet immediately following the cover sheet and shall contain all of the following:

(*i*) In 12-point boldface type: “The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against you.”

(*ii*) An exact copy of the items prohibited in section 27.

(*iii*) In 12-point boldface type: “The fact that there is a notice of this offering on file with the attorney general does not constitute approval, recommendation, or endorsement by the attorney general.”

(*iv*) If the franchisor is subject to the escrow provisions of section 12, a statement describing the right of the franchisee to request an escrow arrangement.

(*v*) A statement that any questions regarding the notice should be directed to the department along with the address and phone number of the department.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1509-445.1511 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to disclosure statement, exemption from registration requirements, and proposed offering prospectus.

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445.1512 Escrow of initial investment and other funds; time; surety bond; financial institution as escrow agent; release of escrowed funds; affidavit.

Sec. 12. (1) A franchisor whose most recent financial statements are unaudited and which show a net worth of less than $100,000.00 shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee or subfranchisor until the obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

(2) The escrow agent shall be a financial institution authorized to do business in this state. The escrow agent may release to the franchisor those amounts of the escrowed funds applicable to a specific franchisee or subfranchisor upon presentation of an affidavit executed by the franchisee and an affidavit executed by the franchisor stating that the franchisor has fulfilled its obligation to provide real estate, improvements, equipment, inventory, training, or other items. This subsection does not prohibit a partial release of escrowed funds upon receipt of affidavits of partial fulfillment of the franchisor's obligation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1513 Conditions prohibiting offering for sale or selling franchise.

Sec. 13. A franchise shall not be offered for sale or sold in this state if any of the following apply:

(a) The franchisor's method of business includes or would include activities which are illegal where performed.

(b) A person identified in the disclosure statement has been convicted of an offense described in section 8(2)(e)(*i*), is subject to an administrative order, or has had a civil judgment entered against him or her involving the illegal offering of franchises or securities and the department determines that the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

(c) The franchise offering is the subject of a permanent or temporary injunction entered under any federal or state act applicable to the offering.

(d) The franchisor has failed to pay the proper fee.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1514-445.1518 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to effective date of registration, notice of stop order, conditions to sale of franchise, and renewal of registration.

445.1519 Filing change in information contained in notice.

Sec. 19. A franchisor shall file with the department promptly in writing any change in the information contained in the notice as originally submitted or amended.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1520 Accounts of franchise sales; reports; examination of records.

Sec. 20. A franchisor offering franchises for sale in this state shall keep and maintain accounts of franchise sales in accordance with generally accepted accounting principles and shall make and file with the department such reports as the department may by rule or order prescribe, including an annual report setting forth the franchises sold by it, the proceeds derived therefrom, and the names and addresses of all of the franchisor's franchise agents in this state. All these records are subject at any time to a reasonable periodic, special, or other examinations by a representative of the department, within or without this state, as the department deems necessary or appropriate in the public interest or for the protection of franchisees.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1521 Certain facts not to constitute finding or approval; representation inconsistent with section prohibited.

Sec. 21. (1) The fact that documents required under this act are filed does not constitute a finding by the department that a document filed under this act is true, complete, or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the department has passed in any way upon the merits or qualifications of, or recommended or given approval to, any persons, franchise, or transaction.

(2) A person shall not make or cause to be made to a prospective purchaser or offeree a representation inconsistent with this section.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

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445.1522 Service of process.

Sec. 22. The notice filed by a nonresident franchisor under section 7a shall be considered an irrevocable consent appointing the corporations and securities bureau of the department of commerce to be its attorney to receive service of lawful process in any noncriminal action or proceeding against it or its successor, executor, or administrator, which arises under this act or a rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the corporations and securities bureau of the department of commerce but it is not effective unless the plaintiff, who may be the department in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last address on file with the department and the plaintiff's affidavit of compliance is filed in the action, on or before the return day of the process, if any, or within such further time as the court allows.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1523 Untrue statement, omission, or failure to give notice of change.

Sec. 23. A person shall not make an untrue statement of a material fact in a notice or report filed with the department under this act, or omit to state in a notice or report a material fact which is required to be stated therein, or fail to notify the department of a change as required by this act.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1524 Filing of advertisement or sales literature; exemption from liability.

Sec. 24. (1) The department may by rule or order require the filing of any advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective franchisees.

(2) Nothing in this act shall impose any liability, civil or criminal, upon any person or publisher regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station, and acting solely in his official capacity, who publishes an advertisement in good faith and without knowledge that such advertisement or publication constitutes a violation of this act.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1525 Publication of false or misleading advertisement prohibited.

Sec. 25. A person shall not publish an advertisement concerning the offer or sale of a franchise in this state if the advertisement contains a statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1526 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to violation of order.

445.1527 Void and unenforceable provisions.

Sec. 27. Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) The term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the

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franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(*i*) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.

(*ii*) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.

(*iii*) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(*iv*) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

(h) A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

(i) A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1528 Pyramid or chain promotion or distribution.

Sec. 28. (1) A person may not offer or sell any form of participation in a pyramid or chain promotion. A pyramid or chain promotion is any plan or scheme or device by which (a) a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program or (b) a participant is to receive compensation when a person introduced by the participant introduces one or more additional persons into participation in the plan, each of whom receives the same or similar right, privilege, license, chance, or opportunity.

(2) A pyramid or chain promotion is declared to be illegal and against the public policy of the state. Any contract made in violation of this section is voidable at the sole option of the purchaser.

(3) The department shall not accept for filing a franchise which involves a pyramid or chain distribution contrary to the laws of this state.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1529, 445.1530 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to franchise agent's application and cease and desist order.

445.1531 Liability for damages or rescission; basis of damages.

Sec. 31. (1) A person who offers or sells a franchise in violation of section 5 or 8 is liable to the person purchasing the franchise for damages or rescission, with interest at 6% per year from the date of purchase until June 20, 1984 and 12% per year thereafter and reasonable attorney fees and court costs.

(2) A person may not file or maintain suit under this section if the franchisee received a written offer before suit and at a time when the franchisee owned the franchise to refund the consideration paid together with interest from the date of purchase at 1 percentage point above the rate provided by subsection (1), less the amount of income received on the franchise, conditioned only upon tender by the person of all items received by the franchisee for the consideration and not sold, and failed to accept the offer within 30 days of its receipt, or if the franchisee received the offer before suit and at a time when the franchisee did not own the franchise, unless the franchisee rejected the offer in writing within 30 days of its receipt. The rescission offer shall recite the provisions of this section. If the franchise involves substantial building or substantial equipment and a significant period of time has elapsed since the sale of the franchise to the franchisee, the

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rescission offer may recognize depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisor.

(3) A person who offers or sells a franchise in violation of section 7a is liable to the person purchasing the franchise for damages caused by the noncompliance.

(4) In a proceeding under this act, damages may be based on reasonable approximations, but not on speculation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984;—Am. 1989, Act 1, Eff. Mar. 29, 1990;—Am. 1989, Act 49, Imd. Eff. June 12, 1989.

445.1532 Joint and several liability.

Sec. 32. A person who directly or indirectly controls a person liable under this act, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person occupying a similar status or performing similar functions, an employee of a person so liable who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as the person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1533 Statute of limitations.

Sec. 33. An action shall not be maintained to enforce a civil or criminal liability created under this act unless brought before the expiration of 4 years after the act or transaction constituting the violation.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1534 Civil liability; liability under other statute or common law.

Sec. 34. Except as explicitly provided in this act, civil liability in favor of any private party shall not arise against a person by implication from or as a result of the violation of a provision of this act or a rule or order hereunder. Nothing in this act shall limit a liability which may exist by virtue of any other statute or under common law if this act were not in effect.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1535 Action by department for injunction, restitution, or compliance; restraining order; writ of mandamus; appointment of receiver or conservator; bond not required; costs; notice of action; opportunity to cease and desist or to confer with department; presumption of immediate and irreparable harm.

Sec. 35. (1) Whenever it appears to the department that a person has engaged, is engaged, or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, after notice as required in subsection (2), the department may bring an action in the name of the people in the circuit court to enjoin the acts or practices, to obtain restitution on behalf of the franchisee, or to enforce compliance with this act or a rule or order hereunder. Upon a proper showing a preliminary or permanent injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the department to post a bond. The court may award costs, including reasonable costs of investigation, to the prevailing party.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section, the department shall notify the person of the intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the department in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to the place of business listed in the notice under section 7a.

(3) In an action under this section to enjoin enforcement of a provision that is void and unenforceable under section 27, if the court finds that such a provision is present, there is a presumption of immediate and irreparable harm to the franchisee. Further showing shall not be required for a grant of a preliminary injunction.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1536 Investigations; statements under oath; administration of oaths and affirmations; subpoena; evidence; order requiring appearance; self-incrimination; perjury; contempt.

Sec. 36. (1) The department in its discretion may:

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(a) Make such public or private investigations within or without this state as it deems necessary to determine if a person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, and publish information concerning the violation of this act or any rule or order.

(b) Require or permit any person to file a statement under oath or otherwise subject to the penalties of perjury as the department requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to reply with all required information to such a departmental letter within 15 days after receipt thereof, shall be the basis for issuance of a cease and desist order.

(2) For the purpose of an investigation or proceeding under this act, the department or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to a person, the circuit court, upon application by the department, may issue to the person an order requiring him to appear before the department, or an officer designated by it, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(4) A person is not excused from attending and testifying or from producing a document or record before the department, or in obedience to the subpoena of the department or an officer designated by it or in a proceeding instituted by the department on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but a person may not be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1537 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed section pertained to referring information as to violation to attorney general.

445.1538 Violation; penalty; punishing crime under other statute.

Sec. 38. A person who violates a provision of this act shall be fined not more than $10,000.00, or imprisoned for not more than 7 years, or both. Nothing in this act limits the power of the state to punish a person for any conduct which constitutes a crime under any other statute.

History: 1974, Act 269, Eff. Oct. 15, 1974.

445.1539 Prohibited conduct equivalent to appointment of corporations and securities bureau as attorney for service of process; procedure for service of process.

Sec. 39. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or a rule or order hereunder, whether or not the person has filed a consent to service of process, and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to an appointment of the the corporations and securities bureau of the department of commerce to be his or her attorney to receive service of a lawful process in any noncriminal action or proceeding against the person or a successor, executor, or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the corporations and securities bureau of the department of commerce, but it is not effective unless the plaintiff, which may be the department in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any or within such further time as the court allows.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1540 Collection and disposition of fees and fines; detailed statement; fee for filing notice under § 445.1507a.

Sec. 40. (1) The department shall charge and collect the fee fixed by this section. Fees and fines collected under this section and section 7a shall be transmitted to the state treasurer at least weekly, accompanied by a

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detailed statement thereof and shall be credited to the general fund.

(2) The fee for filing a notice under section 7a is $250.00.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1541 Rules.

Sec. 41. The department shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to implement this act.

History: 1974, Act 269, Eff. Oct. 15, 1974.

Administrative rules: R 445.101 et seq. of the Michigan Administrative Code.

445.1542 Documents subject to §§ 15.231 to 15.246; publication of information; disclosure of information withheld from public inspection; evidence sought under subpoena.

Sec. 42. Filings, reports, and other papers and documents filed with the department under this act shall be subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The department may publish information filed with it or obtained by it, if the action is in the public interest. The department or its examiners, investigators, assistants, clerks, or deputies shall not disclose information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this act or to other federal or state regulatory agencies. This act shall neither create nor derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the department.

History: 1974, Act 269, Eff. Oct. 15, 1974;—Am. 1984, Act 92, Eff. June 20, 1984.

445.1543-445.1545 Repealed. 1984, Act 92, Eff. June 20, 1984.

Compiler's note: The repealed sections pertained to copies of documents and provided an effective date.

445.1546 Prior acts, offenses, rights, liabilities, penalties, forfeiture, or punishments not impaired or affected; transfer of records, personnel, and funds.

Sec. 46. (1) This act does not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or a liability, penalty, forfeiture, or punishment incurred before this act takes effect, but the same may be enjoyed, asserted, and enforced, as fully and to the same extent as if this act had not been passed.

(2) The department of commerce shall transfer all records related to the administration of this act to the department of attorney general along with personnel and funds sufficient, in the opinion of the attorney general, to carry out this act.

History: Add. 1984, Act 92, Eff. June 20, 1984.

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REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS
Act 118 of 1981

AN ACT to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

The People of the State of Michigan enact:

445.1561 Meanings of words and phrases.

Sec. 1. For the purposes of this act, the words and phrases defined in sections 2 to 6 have the meanings ascribed to them in those sections, except where the context clearly indicates a different meaning.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1562 Definitions; C, D.

Sec. 2. (1) "Closed dealership" means a new motor vehicle dealer whose dealer agreement has been terminated, canceled, discontinued, or not renewed.

(2) "Dealer agreement" means the agreement or contract in writing between a distributor and a new motor vehicle dealer, between a manufacturer and a distributor or a new motor vehicle dealer, or between an importer and a distributor or a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale or resale of new and unaltered motor vehicles and accessories for motor vehicles.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

445.1563 Definitions; D to F.

Sec. 3. (1) "Distributor" means any person, including an importer, resident or nonresident, who is engaged in the business pursuant to a dealer agreement, in whole or in part, of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer, who maintains a factory representative for such purposes, resident or nonresident, or who controls any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person who alters or converts motor vehicles for sale to a new motor vehicle dealer.

(2) "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

(3) "Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(4) "Factory representative" means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

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History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

445.1564 Definitions; G to M.

Sec. 4. (1) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade, as defined and interpreted under section 2103 of the uniform commercial code, 1962 PA 174, MCL 440.2103.

(2) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative.

(3) "Motor vehicle" means that term as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, but does not include a bus, tractor, or farm equipment.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 2000, Act 240, Imd. Eff. June 28, 2000.

445.1565 Definitions; N to P.

Sec. 5. (1) "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(2) "New motor vehicle dealer" means a person, including a distributor, who holds a dealer agreement granted by a manufacturer, distributor, or importer for the sale or distribution of its motor vehicles, who is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles and who has an established place of business in this state.

(3) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(4) "Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

445.1566 Definitions; R.

Sec. 6. "Relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than 25,000, the area within a radius of 6 miles of the intended site of the proposed or relocated dealer. The 6-mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is not greater than 25,000, the area within a radius of 10 miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The 10-mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1567 Cancellation, termination, nonrenewal, or discontinuance of dealer agreement; conditions; existence of good cause.

Sec. 7. (1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew, or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section 10.

(b) Acted in good faith.

(c) Has good cause for the cancellation, termination, nonrenewal, or discontinuance.

(2) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1)(c) when both of the following occur: (a) there is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer and (b) the manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than 2 years prior to the date on which notification was given pursuant to section 10.

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(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1) when the new motor vehicle dealer fails to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure.

(b) The notification stated that the notice of failure of performance was provided pursuant to this act.

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.

(d) The failure continued for more than 180 days after the date notification was given pursuant to subdivision (a).

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1568 Acts not constituting good cause for termination, cancellation, nonrenewal, or discontinuance of dealer agreement.

Sec. 8. Notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement under section 7(1)(c):

(a) A change in ownership of the new motor vehicle dealer's dealership. This subdivision does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter, provided that the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1569 Burden of proof.

Sec. 9. For each termination, cancellation, nonrenewal, or discontinuance, the manufacturer or distributor shall have the burden of proof for showing that it has acted in good faith, that the notice requirement has been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1570 Notice of termination, cancellation, nonrenewal, or discontinuance of dealer agreement.

Sec. 10. Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal, or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal, or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d), notice shall be made not less than 90 days prior to the effective date of the termination, cancellation, nonrenewal, or discontinuance.

(b) Notice shall be by certified mail to the new motor vehicle dealer and shall contain the following:

(*i*) A statement of intention to terminate, cancel, not renew, or discontinue the dealer agreement.

(*ii*) A statement of the reasons for the termination, cancellation, nonrenewal, or discontinuance.

(*iii*) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(c) Notwithstanding subdivision (a), notice shall be made not less than 15 days prior to the effective date of the termination, cancellation, nonrenewal, or discon tinuance for any of the following reasons:

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(*i*) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

(*ii*) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for 7 consecutive business days.

(*iii*) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of 1 year under the law under which the dealer was convicted, or the crime involved theft, dishonesty, or false statement regardless of the punishment.

(*iv*) Revocation of any license under which the new motor vehicle dealer is required to have to operate a dealership.

(*v*) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a), notice shall be made not less than 12 months prior to the effective date of a termination, cancellation, nonrenewal, or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1571 Compensation of dealer generally.

Sec. 11. (1) Upon the termination, cancellation, nonrenewal, or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) All new current model year motor vehicle inventory purchased from the manufacturer or distributor, which has not been materially altered, substantially damaged, or driven for more than 300 miles and all new motor vehicle inventory not of the current model year which has not been materially altered, substantially damaged, or driven for more than 300 miles, provided the noncurrent model vehicles were purchased from the manufacturer or distributor and drafted on the dealer's financing source or paid for within 120 days of the effective date of the termination, cancellation, or nonrenewal.

(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer's or distributor's current parts catalog.

(c) Equipment, furnishings, and signs purchased from the manufacturer or distributor.

(d) Special tools purchased from the manufacturer or distributor within 3 years of the date of termination, cancellation, nonrenewal, or discontinuance.

(2) Upon the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of 1 year from the effective date of termination, cancellation, nonrenewal, or discontinuance, or the remainder of any lease, whichever is less. However, the payment required by this subsection shall not apply to any termination, cancellation, nonrenewal, or discontinuance made pursuant to section 10(c).

(3) The requirement of paying an annual fair rental value pursuant to subsection (2) shall apply only to the extent the new motor vehicle dealer's established place of business is used for performance of sales and service obligations under the manufacturer's or distributor's dealer agreement.

(4) In the event that termination is by the dealer, the payment required by subsection (2) is required only if the new motor vehicle dealer makes available to the manufacturer or distributor use and possession of the premises free of any claims of others for the 1-year period, except for use by the dealer for closing his or her business.

(5) In the event that termination is by the dealer, the payment required by subsection (2) shall not exceed $20,000.00 unless provided otherwise by contract entered into between the parties.

(6) This section shall not relieve a new motor vehicle dealer, lessor, or other owner of an established place of business from the obligation of mitigating damages.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1572 Payment of compensation; time; interest.

Sec. 12. (1) Compensation for new motor vehicle inventory under section 11(1)(a) shall be paid, if possible, within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance, provided that the new motor vehicle dealer has met all reasonable requirements of the dealer agreement with respect to the return of the new motor vehicle inventory. Compensation for items of personal property required by section 11(1)(b), 11(1)(c), and 11(1)(d) shall be paid within 90 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance, provided that the new motor vehicle

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dealer has met all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Fair and reasonable compensation pursuant to section 11(1)(a) shall be not less than the new motor vehicle dealer's net acquisition cost. Fair and reasonable compensation pursuant to section 11(1)(b) shall be the amount stated in the manufacturer's or distributor's current parts price list. Fair and reasonable compensation pursuant to section 11(1)(c) and 11(1)(d) shall be the fair market value of the personal property.

(3) In the event payment is not made within 90 days as provided in subsection (1), interest shall accrue thereafter on all amounts due the new motor vehicle dealer at a rate of 12% per annum.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1573 Requiring dealer to perform certain acts prohibited.

Sec. 13. A manufacturer, importer, or distributor shall not require any new motor vehicle dealer in this state to do any of the following:

(a) Order, or accept delivery of any new motor vehicle, or part or accessory of a new motor vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.

(b) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, or display decorations or materials or pay or assume directly in connection with the sale of a new motor vehicle any part of the cost of a refund, rebate, or discount made by or lawfully imposed by the manufacturer or distributor to or in favor of a consumer unless voluntarily agreed to by the dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of this act.

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

(f) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this act; require that any dealer agreement be governed by the laws of a state other than this state; or require any controversy between a new motor vehicle dealer and a manufacturer, importer, or distributor to be referred to a person other than the duly constituted courts of this state or of the United States located in this state, if the referral would be binding upon the new motor vehicle dealer unless the parties agree at the time of a controversy to refer a controversy to a court of the United States located outside this state or agree at the time of the arbitration to conduct arbitration either within or outside this state. Such a provision in a dealer agreement is void and unenforceable.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

445.1574 Prohibited conduct by manufacturer, importer, or distributor.

Sec. 14. (1) A manufacturer, importer, or distributor shall not do any of the following:

(a) Adopt, change, establish, or implement a plan or system for the allocation and distribution of new motor vehicles to new motor vehicle dealers that is arbitrary or capricious, or modify an existing plan or system that causes the plan or system to be arbitrary or capricious.

(b) Fail or refuse to advise or disclose to any new motor vehicle dealer having a dealer agreement, upon written request therefore, the basis upon which new motor vehicles of the same line make are allocated or distributed to new motor vehicle dealers in the state and the basis upon which the current allocation or distribution is being made or will be made to that new motor vehicle dealer.

(c) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any new motor vehicle dealer having a dealer agreement for the retail sale of new motor vehicles sold or

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distributed by a manufacturer or distributor any such motor vehicles as are covered by such dealer agreement specifically publicly advertised in the state by the manufacturer or distributor to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this act if the failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo or other cause over which the manufacturer or distributor has no control. If the manufacturer or distributor requires a new motor vehicle dealer to purchase essential service tools with a purchase price in the aggregate of more than $7,500.00 in order to receive a specific model vehicle, the manufacturer or distributor shall upon written request provide the dealer with a good faith estimate in writing of the number of vehicles of that specific model the dealer will be allocated during that model year in which the tool is required to be purchased.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to, the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of $5.00 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by any of the following:

(*i*) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

(*ii*) In the case of foreign made vehicles or components, revaluation of the United States dollar.

(*iii*) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters.

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line make.

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent.

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose.

(h) Directly or indirectly own, operate, or control a new motor vehicle dealer including, but not limited to, a new motor vehicle dealer engaged primarily in performing warranty repair services on motor vehicles pursuant to the manufacturer's warranty. This subdivision does not apply to any of the following:

(*i*) The ownership, operation, or control by a manufacturer or distributor of a new motor vehicle dealer for a period of not more than 24 months during the transition from 1 owner or operator to another. The circuit court may extend the 24-month time period for an additional 12 months upon receipt of an application from a manufacturer or distributor and a showing of good cause.

(*ii*) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer or distributor while it is being sold under a bona fide contract or purchase option to the operator of the new motor vehicle dealer.

(*iii*) The direct or indirect ownership by a manufacturer of an entity that owns, operates, or controls a new motor vehicle dealer of the same line make franchised by the manufacturer, if all of the following conditions are met:

(A) As of May 1, 2000, the manufacturer for a period of not less than 12 months has continuously owned, directly or indirectly, 1 or more new motor vehicle dealers in this state.

(B) All of the new motor vehicle dealers selling the manufacturer's motor vehicles in this state trade exclusively in the manufacturer's line make.

(C) As of January 1, 2000, not fewer than 1/2 of the new motor vehicle dealers of the line make within this state own and operate 2 or more new motor vehicle dealer facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(D) For a manufacturer or any entity in which the manufacturer has more than a 45% ownership interest, the manufacturer or entity has not acquired, operated, or controlled a new motor vehicle dealer that the manufacturer did not directly or indirectly own as of May 1, 2000.

(i) Sell any new motor vehicle directly to a retail customer other than through its franchised dealers, unless the retail customer is a nonprofit organization or a federal, state, or local government or agency. This

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subdivision does not prohibit a manufacturer from providing information to a consumer for the purpose of marketing or facilitating the sale of new motor vehicles or from establishing a program to sell or offer to sell new motor vehicles through the manufacturer's new motor vehicle dealers.

(j) Prevent or attempt to prevent by contract or otherwise any new motor vehicle dealer from changing the executive management of a new motor vehicle dealer unless the manufacturer or distributor, having the burden of proof, can show that the change of executive management will result in executive management by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer or distributor. If a manufacturer or distributor rejects a proposed change in the executive management, the manufacturer or distributor shall give written notice of its reasons to the dealer within 60 days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the change in executive management shall be considered approved.

(k) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.

(*l*) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the 60 days shall be considered consent.

(m) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership.

(2) A manufacturer or distributor, either directly or through any subsidiary, shall not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998;—Am. 2000, Act 239, Imd. Eff. June 28, 2000.

445.1575 Succession to dealership by designated family member of deceased or incapacitated dealer; conditions; refusal to honor existing dealer agreement for good cause; personal and financial data; notice of refusal to approve succession; contents; service; designation of successor by written instrument.

Sec. 15. (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within 120 days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

(2) The manufacturer or distributor may request from a designated family member such personal and financial data as is reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession, the manufacturer or distributor may, within 60 days after receipt of the notice of the designated family member's intent to suceed the dealer in the ownership and operation of the dealership, or within 60 days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than 90 days after the date the notice is served.

(5) If notice of refusal is not served within the 60 days provided for in subsection (3), the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by this act.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

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445.1576 Establishment or relocation of additional dealer; notice; declaratory judgment action; exception; judicial determination of good cause.

Sec. 16. (1) As used in this section, "relocate" and "relocation" shall not include the relocation of a new motor vehicle dealer within 2 miles of its established place of business.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 30 days after receiving the notice provided for in subsection (2), or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. Once an action has been filed, the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket.

(4) This section shall not apply to the reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding year, if the established place of business of the reopened or replacement dealer is within 2 miles of the established place of business of the closed dealership.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency of the investment.

(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.

(c) Whether it is injurious or beneficial to the public welfare.

(d) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1577 Dealer's obligations for preparation, delivery, and warranty service; written specifications; compensating dealer for required warranty service; schedule of compensation; prohibited conduct; claims for labor and parts; payment; approval or disapproval; charge back for false or fraudulent claims; records of warranty repairs; compensation and claims for promotion events, programs, or activities; approval or disapproval of claims.

Sec. 17. (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of a dealer for warranty labor be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that such rates are reasonable.

(3) A manufacturer or distributor shall not:

(a) Fail to perform any warranty obligation.

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the

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defects.

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form shall be considered to be approved and payment shall be made within 30 days. A claim which has been approved and paid may not be charged back to the dealer unless the manufacturer can show that the claim was fraudulent, false, or unsubstantiated, except that a charge back for false or fraudulent claims shall not be made more than 2 years after payment, and a charge back for unsubstantiated claims shall not be made more than 15 months after payment. A new motor vehicle dealer shall maintain all records of warranty repairs, including the related time records of its employees, for at least 2 years following payment of any warranty claim.

(5) A manufacturer or distributor shall compensate the new motor vehicle dealer for manufacturer or distributor sponsored sales or service promotion events, programs, or activities in accordance with established guidelines for such events, programs, or activities.

(6) All claims made by a new motor vehicle dealer pursuant to subsection (5) for promotion events, programs, or activities shall be paid within 10 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form shall be considered to be approved and payment shall be made within 30 days. The manufacturer has the right to charge back any claim for 6 months after the later of either the close of the promotion event, program, or activity, or the date of the payment.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1578 Liability for damage to new motor vehicles; rejection of new motor vehicle by dealer; credit.

Sec. 18. (1) Notwithstanding the terms, provisions, or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

(2) Notwithstanding the terms, provisions, or conditions of any agreement, the manufacturer or distributor is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer's account within 10 business days after receipt of the notice of rejection.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1579 Indemnification of dealer against certain judgments; payment of costs, fees, and judgments; notice.

Sec. 19. (1) Notwithstanding the terms, provisions, or conditions of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers against any judgment for damages or settlement agreed to in writing by the manufacturer, including, but not limited to, court costs and reasonable attorney's fees of the new motor vehicle dealer arising solely out of the complaints, claims, or actions from defects, which relate to the manufacture, assembly, or design of vehicles, parts, or accessories, or other functions by the manufacturer or distributor, beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, or any damages to merchandise occurring in transit to the dealer if the carrier is designated by the manufacturer or distributor. If the complaint, claim, or action contains independent allegations against the dealer, the manufacturer shall pay only that portion of the costs, fees, and judgment or settlement which is directly related to the manufacture, assembly, or design of the vehicle, parts or accessories, or other functions of the manufacturer beyond the control of the dealer.

(2) A dealer shall have no right to indemnification or attorney's fees as provided in subsection (1) unless the dealer has given reasonable notice in writing of the complaint, claim, or action to the manufacturer or

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distributor.

History: 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

445.1580 Action for damages or declaratory judgment; liability.

Sec. 20. (1) If a manufacturer or distributor terminates, cancels, fails to renew, or discontinues a dealer agreement for other than good cause as defined in this act, the new motor vehicle dealer may bring an action against the manufacturer or distributor to recover actual damages reasonably incurred as a result of the termination, cancellation, failure or discontinuance.

(2) A manufacturer or distributor who violates this act is liable for all damages sustained by a new motor vehicle dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle dealer may bring an action for declaratory judgment for determination of any controversy arising pursuant to this act.

(4) A manufacturer or distributor who violates this act shall be liable for all court costs and reasonable attorney's fees incurred by the dealer.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1581 Injunctive relief.

Sec. 21. Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancellation, nonrenewal, or discontinuance of a dealer agreement or any other violation of this act. The court may grant injunctive relief or a temporary restraining order without bond.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1582 Act inapplicable to dealer outside Michigan.

Sec. 22. Notwithstanding the terms, provisions, or conditions of a dealer agreement, this act shall have no application to dealers located outside the state of Michigan.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

445.1582a Existing agreements and agreements entered into or renewed after effective date.

Sec. 22a. The 1998 amendments to this act that added this section apply to agreements in existence on the effective date of this section and to agreements entered into or renewed after the effective date of this section.

History: Add. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

445.1583 Repeal of §§ 445.521 to 445.534.

Sec. 23. Act No. 331 of the Public Acts of 1978, being sections 445.521 to 445.534 of the Compiled Laws of 1970, is repealed.

History: 1981, Act 118, Imd. Eff. July 19, 1981.

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MORTGAGE LENDING PRACTICES
Act 135 of 1977

An act to prohibit certain mortgage lending practices by a credit granting institution; to prescribe the powers and duties of the commissioner of the financial institutions bureau in relation to those practices; to permit the establishment of local mortgage review boards; and to provide remedies and penalties.

History: 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

The People of the State of Michigan enact:

445.1601 Definitions.

Sec. 1. As used in this act:

(a) "Annual percentage rate" means the rate as computed under the federal truth in lending act, 15 U.S.C. 1601 to 1677.

(b) "Commissioner" means the commissioner of the financial institutions bureau of the department of commerce.

(c) "Credit granting institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, a state or federally chartered credit union, Michigan state housing development authority, or a business entity making or purchasing mortgage loans, which has a main office, branch office, or service center doing such business within the state of Michigan.

(d) "Home improvement loan" means a loan secured or unsecured to be used for the purpose of repairing, rehabilitating, or remodeling an existing residential dwelling designed for occupancy by 4 or fewer families, as stated by the borrower in the loan application and as recorded on the books of the credit granting institution.

(e) "Loan application" means a written application for a mortgage loan or home improvement loan.

(f) "Loan contract" means a contract for a mortgage loan or home improvement loan.

(g) "Mortgage loan" means a loan secured by a mortgage on real property designed for occupancy by 4 or fewer families, including individual units of condominiums and cooperatives, a refinancing of an existing mortgage loan on real property designed for occupancy by 4 or fewer families involving an increase in the outstanding balance of the principal due, or a loan secured by a junior lien on real property designed for occupancy by 4 or fewer families undertaken for any purpose. Mortgage loan does not include construction financing, purchase of an interest in a pool of mortgage loans, or an extension of the maturity of an existing mortgage loan not involving an increase in the unpaid principal due.

(h) "Neighborhood" means either of the following:

(*i*) A census tract as defined by the United States bureau of the census in census of population, if located within a standard metropolitan statistical area as defined by the United States office of management and budget.

(*ii*) An area which is designated by a single zip code number under the zoning improvement plan of the United States postal service, if located outside a standard metropolitan statistical area as defined by the United States office of management and budget.

History: 1977, Act 135, Eff. July 1, 1978.

445.1602 Denying loan application or varying terms or conditions of loan contract; uniform application of policy or criteria; basis for consideration of loan application; minimum mortgage amount; minimum loan amount; opportunity to submit loan application; credit unions; written statement; compliance with equal credit opportunity act; application fee; copy of appraisal; copies of forms, reports, and correspondence; liability for error or omission; loan inquiry; pamphlet or document explaining criteria.

Sec. 2. (1) Except on the basis of written policies or criteria uniformly applied to all neighborhoods within a particular standard metropolitan statistical area or within the county in areas outside a standard metropolitan statistical area, a credit granting institution shall not deny a loan application or vary the interest rate, the term to maturity, the percentage required for a down payment, the application and appraisal procedures, or other terms or conditions of a loan contract for either of the following:

(a) Due to racial or ethnic characteristics or trends in the neighborhood in which the real estate is located.

(b) Due to the age of the structure on the real estate proposed as security or the age of other structures in the neighborhood in which the real estate is located. This subdivision does not preclude a credit granting institution from considering the physical condition and probable remaining useful life of the structure and all

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structures within a radius of 750 feet.

(2) A policy or criteria used by a credit granting institution is considered to be uniformly applied, even if a credit granting institution grants exceptions to the policy or criteria in favor of a loan applicant in not more than 5% of the loan applications submitted to the credit granting institution.

(3) Each loan application shall be individually considered on the basis of a factually supportable analysis of the lending risks associated with the proposed loan.

(4) A credit granting institution shall not impose a minimum mortgage amount greater than $10,000.00, and a credit granting institution shall not impose a minimum loan amount of greater than $1,000.00 for a home improvement loan.

(5) A credit granting institution shall not deny an individual an opportunity to submit a loan application. This act shall not be construed to require a credit union to allow loan inquiry or application by a person who is not a member or eligible to be a member of the credit union.

(6) A person who makes a loan application for a mortgage loan or home improvement loan that is denied or the terms of which are varied and not accepted by the applicant shall receive from the credit granting institution a written statement of the reasons for the rejection or variation of terms. A credit granting institution that complies with the requirements of the equal credit opportunity act, title VII of Public Law 90-321, 15 U.S.C. 1691 to 1691f, and the regulations promulgated under that act, is considered to have complied with the requirements of this subsection.

(7) A credit granting institution, unless otherwise prohibited by law, may charge an application fee uniform as to type of loan. If a credit granting institution includes appraisal in its written statement of reasons for rejection or variance or collects an application appraisal fee, then upon the request of a person making a loan application that is denied or the terms of which are varied and not accepted by the applicant, a credit granting institution shall provide the person, without additional charge, with a copy of the appraisal made in connection with the loan application. If an application appraisal fee is not collected, the copy may be made usable only for purposes related to this act. Copies of other completed forms, reports, and correspondence, except a credit report or correspondence pertaining to a credit report, used by the credit granting institution in reaching its decision shall be provided, on request and without charge, to a person making a loan application that is denied or the terms of which are varied and not accepted by the applicant.

(8) Except for an error or omission that is a violation of this act, a credit granting institution is not liable to an applicant or any other person for an error or omission in an appraisal or other supporting documents made available to an applicant.

(9) If a person makes a loan inquiry relating to the prospects of obtaining a loan, the credit granting institution shall respond to the inquiry and shall send or cause to be delivered to the person making the inquiry a copy of the pamphlet or other documents prepared pursuant to subsection (10).

(10) Each credit granting institution shall make available for public distribution at the institution's principal office and each branch office or service center a pamphlet or document explaining in general terms the credit granting institution's criteria for the approval or denial of a loan application. The pamphlet or other document shall prominently state that a person has the right to make a loan inquiry and to file a written application for a mortgage loan or home improvement loan and to receive a written response to the application. A credit granting institution may use a separate pamphlet or document for mortgage loans and home improvement loans, and the pamphlet or document may contain additional material as well as the material required by this subsection. A copy of the pamphlet or other document shall be filed with the commissioner.

History: 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

445.1602a Property/casualty insurance as condition to loan; limitation on amount required; amount as condition of sale, transfer, or assignment.

Sec. 2a. (1) Except as provided in subsection (2), a credit granting institution that requires a mortgagor to maintain property/casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property/casualty insurance to be greater than the replacement cost of the mortgaged building or buildings.

(2) A credit granting institution may require an amount of property/casualty insurance that is required of the credit granting institution as a condition of a sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the credit granting institution anticipate a sale, transfer, or assignment at the time the mortgage loan is made.

History: Add. 1995, Act 214, Imd. Eff. Nov. 29, 1995.

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445.1603 Lending policies and criteria; loan application procedures and contract terms.

Sec. 3. (1) Except as otherwise prohibited in section 2, lending policies and criteria of a credit granting institution used in the consideration of a loan application shall include without limitation the following:

(a) Consideration of the credit eligibility of the applicant and the market value of a proposed security.

(b) Consideration of those factors, known to the credit granting institution, as the presence of active community and neighborhood organization, the presence of government, nonprofit, and private programs in the neighborhood intended to eliminate negative environmental influences, other revitalization efforts, and any other factors potentially mitigating the effect of physical decline.

(2) A credit granting institution may employ different loan application procedures and contract terms for loans to construct new dwellings as compared to loans to purchase existing dwellings.

History: 1977, Act 135, Eff. July 1, 1978.

445.1604 Advantageous loan terms.

Sec. 4. This act shall not be construed to prohibit the United States, this state, a local governmental entity, an agency or instrumentality of any of the preceding entities, a nonprofit organization, or a credit granting institution acting with the permission of the commissioner, from offering more advantageous loan terms to a person, corporation, partnership, or other entity, or from making advantageous terms available on the basis of location in a specific geographic area when made available under the auspices of an organized housing program operated by the United States, this state, a local governmental entity, an agency or instrumentality of any of the preceding entities, a nonprofit corporation, or a credit granting institution.

History: 1977, Act 135, Eff. July 1, 1978.

445.1605 Notice to loan inquirers or applicants; posting; contents.

Sec. 5. (1) A credit granting institution shall post a written notice in a conspicuous place to reasonably apprise a loan inquirer or applicant of his or her rights under this act in the institution's main office and each branch office or service center in the following language:

Notice to inquirers and loan applicants

You have a right to submit a written application for a mortgage loan or a home improvement loan or to request written information concerning typical loan terms that we are currently offering on mortgage loans and home improvement loans. It is illegal to establish a minimum mortgage amount of more than $10,000.00 or a minimum home improvement loan of more than $1,000.00. It is illegal to deny a loan or vary the terms and conditions of a loan because of the racial or ethnic trends or characteristics of the neighborhood or the age of the structure, but not because of its physical condition. If your application for a loan is rejected, you have a right to a written statement of the reason for the rejection. If you are granted a loan but the amount required for down payment, the interest rate, term to maturity, application procedure, or other terms or conditions of the loan vary from terms or conditions offered in other neighborhoods, you have a right to a written statement of the reasons for the variation. The rights described in this notice are set forth in and limited by (cite this act). If you believe that your rights under this act have been violated, you should contact the financial institutions bureau of the Michigan department of commerce.

(2) The current telephone number of the financial institutions bureau shall be included in the notice set forth in subsection (1).

History: 1977, Act 135, Eff. July 1, 1978;—Am. 1996, Act 337, Imd. Eff. June 26, 1996.

445.1606 Repealed. 2002, Act 692, Eff. Mar. 31, 2003.

Compiler's note: The repealed section pertained to institution subject to Federal Home Mortgage Disclosure Act of 1975.

445.1607 Retention of records and documents.

Sec. 7. A credit granting institution shall retain, for a period of 25 months after a loan application has been submitted or until the loan is repaid, whichever is earlier, a complete record of each loan application which has been accepted, rejected, or varied and the reason for the application's rejection or variation, together with any other documents relating to the application. Records and documents retained under this section shall be maintained in a reasonable manner to enable the commissioner or the commissioner's representatives to locate information pertinent to a given complaint.

History: 1977, Act 135, Eff. July 1, 1978.

445.1608 Violation; investigation; progress report; hearing; report; availability of information.

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Sec. 8. (1) If in the opinion of the commissioner a credit granting institution is violating or has violated this act, or upon receipt of a written complaint of an alleged violation of this act by a credit granting institution, the commissioner shall investigate the alleged violation by the institution. The investigation shall commence within 15 days after the receipt of a complaint, and the commissioner shall report on the progress of the investigation to the affected parties within 30 days. The investigation shall be completed within 60 days after receipt of the complaint, and the commissioner shall report the findings to the affected parties. The commissioner may conduct a hearing on a complaint pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The commissioner shall report annually to the house and senate committees overseeing civil rights and housing issues regarding the enforcement of this act. The commissioner shall provide written testimony summarizing activities taken in the previous year to achieve the purposes of this act, and such testimony shall be made available to the public upon request.

(3) The commissioner shall inform the governor, the legislature, and the press annually of the availability of information collected pursuant to the federal home mortgage disclosure act of 1975, title III of Public Law 94-200, 12 U.S.C. 2801 to 2810, including the methods by which both summary information and institution-specific information may be obtained. The commissioner shall maintain either an electronic or hard copy file of the standard metropolitan statistical area summaries of the information described in this subsection and shall ensure the availability of these summaries to the legislature and other persons upon request. The commissioner may impose a reasonable charge for providing the information.

History: 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

445.1609 Voluntary mortgage review boards; mandatory mortgage review boards.

Sec. 9. (1) The commissioner shall encourage credit granting institutions to cooperate with local citizen's groups and governing bodies of local units of government in the formation and operation of voluntary mortgage review boards. The purpose of voluntary local mortgage review boards is to review complaints of rejected loan applicants, attempt to place loans for rejected applicants, or any other purpose to which the persons forming the mortgage review board may agree.

(2) The commissioner may assist loan applicants and credit granting institutions in the placement of loans.

(3) If a mortgage review board is unable to successfully place the loan for the rejected applicant, the board shall notify the applicant in writing of the applicant's right to file a complaint with the commissioner or other governmental agency, or both, that has regulatory authority over the institution that denied the loan.

(4) Voluntary mortgage review boards shall not be subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, and the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The material furnished to the board by the loan applicant or by the financial institution at the applicant's request and other material relating to an applicant shall be kept confidential. Before a financial institution may release records and documents pertaining to the loan application to the mortgage review board, the applicant shall sign a release form. A financial institution may not release a credit report.

(6) A mortgage review board shall maintain minutes which reflect the number of cases appealed to the board, the disposition of each case, the persons present at each proceeding, and if closed to the public, the party requesting the closing.

(7) Meetings of mandatory mortgage review boards shall be open to the public unless the rejected applicant or the disapproving financial institution requests a closed session to discuss material concerning the rejected application. In cases of closed meetings, only members of the mortgage review board, the disapproving financial institution or the institution's representatives, or both, and the rejected applicant or the applicant's representatives, or both, shall attend.

History: 1977, Act 135, Eff. July 1, 1978;—Am. 1993, Act 43, Imd. Eff. May 27, 1993.

445.1610 Rules.

Sec. 10. The commissioner may promulgate rules as to the form of information required to be given, disclosed, or maintained under this act and as to the enforcement provisions of sections 8, 11, and 12.

History: 1977, Act 135, Eff. July 1, 1978.

Administrative rules: R 445.1001 et seq. of the Michigan Administrative Code.

445.1611 Injunction; damages; commissioner as party plaintiff; class actions prohibited.

Sec. 11. (1) A person may commence an action in the circuit court to seek an injunction for a violation or to seek damages for a violation of this act, or both. The commissioner may join as a party plaintiff in an

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action. A person shall not be entitled to damages under this act unless that person has made a written loan application which has been denied or the terms of which have been varied by the credit granting institution against whom the action is filed. Class actions shall not be permitted under this act.

(2) A person injured by a credit granting institution in violation of this act shall be entitled to those damages as the court determines appropriate, but not to exceed $2,000.00 or actual damages plus reasonable attorney's fees, whichever is greater, for each violation of this act.

History: 1977, Act 135, Eff. July 1, 1978.

445.1612 Violation; fine; costs of investigation; proceedings.

Sec. 12. If the commissioner finds that a credit granting institution has violated this act, the commissioner may assess a fine of not more than $2,000.00 for each violation, except that a credit granting institution which has violated section 2 shall be fined not more than $10,000.00 plus the costs of the investigation. Each person injured by a violation of this act shall constitute a separate violation. However, a violation of this act resulting from the inclusion of prohibited language in, or the exclusion of required language from, a form or other general publication used in the ordinary course of business of a credit granting institution shall constitute a single violation and not several violations for each copy or use of the form or publication. In determining a fine the commissioner shall consider the extent to which the violation was a knowing and wilful violation, the extent of injury suffered because of the violation, the corrective action taken by the institution to insure that the violation will not be repeated, and the record of the institution in complying with this act. Any proceedings under this section shall be subject to the procedures of Act No. 306 of the Public Acts of 1969, as amended.

History: 1977, Act 135, Eff. July 1, 1978.

445.1613 Commencement of action; limitation.

Sec. 13. An action shall not be commenced under this act more than 2 years after the occurrence giving rise to the cause of action.

History: 1977, Act 135, Eff. July 1, 1978.

445.1614 Effective date.

Sec. 14. This act shall not take effect until July 1, 1978.

History: 1977, Act 135, Eff. July 1, 1978.

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DUE-ON-SALE CLAUSES
Act 351 of 1984

AN ACT to regulate the enforcement of due-on-sale clauses in certain real estate mortgages; and to provide penalties and remedies.

History: 1984, Act 351, Eff. Oct. 15, 1985.

The People of the State of Michigan enact:

445.1621 Definitions.

Sec. 1. As used in this act:

(a) "Assumed" means transfers of real property subject to a real property loan by assumptions, land contracts, wrap-around loans, or transfers subject to the mortgage or similar lien, and other like transfers.

(b) "Blended rate period" means a period of time commencing on the date that a residential window period loan contract is amended as provided in Section 4 and ending either on a date selected by the lender at least 3 years after the period commences or on the date the loan was originally scheduled to become due and payable in full, whichever date is earlier.

(c) "Due-on-sale clause" means a contract provision which authorizes the lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest in the property, securing the real property loan is sold or transferred without the lender's prior written consent.

(d) "FHLBB mortgage index rate" means the national average contract interest rate on conventional 25 plus year fixed rate mortgages charged by all major lenders on mortgage loans for previously occupied homes, as most recently published by the federal home loan bank board in its journal or news releases.

(e) "Lender" means a person or governmental agency, other than the Michigan state housing development authority, making real property loans, including, but not limited to, an individual, a federal or state chartered savings and loan association or savings bank, a state or national bank, a federal or state chartered credit union, an insurance company, or other lender approved as a mortgagee under the national housing act, 12 U.S.C. 1701 to 1750g; a manufactured housing retailer which extends credit; or any assignee or transferee, in whole or in part, of such a person or agency. Lender does not include an individual, with respect to a real property loan made by that individual, if during the calendar year in which that real property loan is made, the individual makes not more than 1 other real property loan.

(f) "Loan secured by a lien on real property" means a loan on the security of any instrument which makes the interest in real property specific security for the payment of the obligation secured by the instrument.

(g) "Loan secured by a lien on stock in a residential cooperative housing corporation" means a loan on the security of the following:

(*i*) A security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization.

(*ii*) An assignment of the borrower's interest in the proprietary lease of occupancy agreement issued by such organization.

(h) "Loan secured by a lien on a residential manufactured home, whether real or personal property" means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(i) "Real property loan" means a loan, mortgage, advance, or credit sale secured by a lien on real property, on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, whether real or personal property.

(j) "Residential manufactured home" means a manufactured home as defined in section 603(6) of the national manufactured housing construction and safety standards act of 1974, 42 U.S.C. 5402(6), which is used as a residence.

(k) "Residential window period loan" means a window period loan which is 1 of the following:

(*i*) A loan secured by a lien on real property intended for occupancy by not more than 4 families.

(*ii*) A loan secured by a lien on stock in a residential cooperative housing corporation.

(*iii*) A loan secured by a lien on a residential manufactured home, whether real or personal property.

(l) "Sale or transfer" means the conveyance of property, or of any right, title, or interest in property, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than 3 years, lease option contract, or any other method of conveyance of real property interest.

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(m) “Window period loan” means a real property loan which was made or assumed during a period beginning on January 5, 1977, and ending on October 15, 1982, other than a real property loan originated by a federal savings and loan association, a federal savings bank, a national bank, or a federally chartered credit union. A lender's identity with respect to a window period loan shall be the lender's identity on the date the loan was originated.

History: 1984, Act 351, Eff. Oct. 15, 1985;—Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985.

445.1622 Enforcement of due-on-sale clause generally.

Sec. 2. Except for a residential window period loan, a lender may enforce a due-on-sale clause in a real property loan in accordance with the terms of the loan contract. A lender shall enforce a due-on-sale clause in a residential window period loan only in accordance with sections 3 to 5.

History: 1984, Act 351, Eff. Oct. 15, 1985;—Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985.

445.1623 Procedure before sale or transfer of property securing residential window period loan containing due-on-sale clause; fees; grounds for enforcement of due-on-sale clause; failure to follow procedure.

Sec. 3. (1) Before a sale or transfer of property securing a residential window period loan, which contains a due-on-sale clause, the following procedure shall be followed:

(a) The borrower, or the proposed buyer or transferee, shall provide written notice to the lender of the proposed sale or transfer, which notice shall include the name and address of the proposed buyer or transferee and a copy of the agreement of sale or other document under which the sale or transfer shall occur.

(b) Within 5 business days after receipt of the notice required under subdivision (a), the lender may require by written notice mailed or delivered to the proposed buyer or transferee that the proposed buyer or transferee either provide the credit information customarily required by the lender in connection with a credit application or complete the lender's customary credit application for a similar loan secured by similar property.

(c) Within 15 days after receipt of a written notice for credit information or for completion of the lender's customary credit application, the proposed buyer or transferee shall provide the credit information or complete the application as requested by the lender.

(d) Within 20 days after receipt of the credit information or completion of the lender's customary credit application, the lender shall determine whether the proposed buyer or transferee meets the lender's customary credit standards for a similar loan secured by similar property, and shall notify the proposed buyer or transferee in writing, mailed or delivered, of the lender's decision and, in the event of disapproval, the reasons for the disapproval.

(e) If the lender is not in the business of making real property loans, then the determination to be made by the lender under subdivision (d) shall be whether the proposed buyer or transferee meets the credit standards customarily applied by major institutional residential lenders within the geographic market for similar loans secured by similar properties.

(2) A lender may charge a reasonable fee to determine whether a proposed buyer or transferee meets its customary credit standards, which fee shall be paid by the proposed buyer or transferee at the time of submission of the credit information or application required by subsection (1)(c). If the lender determines that the proposed buyer or transferee meets the lender's customary credit standards, the lender may charge the proposed buyer or transferee a loan processing fee in connection with and to be paid at the time of the amendment to the loan contract as provided in section 4. The total amount of the fees permitted by this subsection shall not exceed 1/2 of 1% of the outstanding balance of the residential window period loan plus the actual cost of an endorsement to the lender's policy of title insurance plus the actual cost of transfer of any private mortgage insurance. Other than the fees provided by this subsection, a lender shall not charge any amount for any reason for a transaction governed by sections 3 to 5.

(3) Except as provided in section 6, a lender may enforce a due-on-sale clause in a residential window period loan if any of the following apply:

(a) The borrower and the proposed buyer or transferee fail to follow in a timely manner the procedures set forth in subsection (1).

(b) The proposed buyer or transferee fails to timely pay a fee charged by the lender under subsection (2).

(c) The lender, in good faith and in accordance with its customary procedures for evaluating creditworthiness, determines that the proposed buyer or transferee does not meet the lender's customary credit standards.

(d) Enforcement is justified by a threat to a legitimate interest of the lender, which includes preventing the impairment or loss of the lender's security.

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(4) A lender shall not enforce a due-on-sale clause under either this section or section 4 in a residential window period loan if the lender fails to follow in a timely manner the procedures set forth in subsection (1).

History: 1984, Act 351, Eff. Oct. 15, 1985;—Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985.

445.1624 Amendment of loan contract; rate of interest; monthly payments of principal and interest; execution, delivery, and effective date of amendment; lien priority; extending term of loan.

Sec. 4. (1) If a lender is not entitled to enforce a due-on-sale clause in a residential window period loan under the procedures established in section 3, the lender shall either consent in writing to the proposed sale or transfer or shall offer in writing to consent in writing to the proposed sale or transfer if the borrower agrees to amend the terms of the residential window period loan to provide for a fixed rate of interest for the blended rate period after the date of the sale or transfer at a rate of interest not greater than the arithmetic mean of the rate specified in the loan contract prior to the amendment and the FHLBB mortgage index rate on the date of the offer, and after the blended rate period agreed to, for the remainder of the term as provided in subsection (2).

(2) If the borrower accepts an offer to amend a loan contract as provided in subsection (1), the amended contract shall provide that, after the blended rate period, the rate of interest shall be the rate selected by the lender, but not more than as follows:

(a) If the lender is making fixed rate mortgage loans on similar types of property at the end of the blended rate period, the rate of interest at which the lender is making those loans.

(b) If the lender is not making fixed rate mortgage loans on similar types of property at the end of the blended rate period, the FHLBB mortgage index rate in effect on the last day of the blend rate period.

(3) If the borrower accepts an offer to amend a loan as provided in subsection (1), during the blended rate period agreed to under subsection (1), there shall be monthly payments of principal and interest in an amount sufficient to repay the loan plus interest on the balance outstanding from time to time at the rate in effect during the blended rate period in equal monthly payments over the remaining original amortization period for the loan. At the end of the blended rate period, the monthly payments of principal and interest shall be adjusted to an amount sufficient to repay the loan plus interest on the balance outstanding from time to time at the rate effective after the blended rate period in equal monthly payments over the remaining original amortization period for the loan.

(4) If the borrower accepts an offer by a lender to amend a loan as provided in subsection (1), the amendment shall be executed and delivered at or before the sale or transfer, and shall be effective beginning on the date of the sale or transfer. If for reasons other than acts of the lender the amendment is not executed and delivered before the sale or transfer, then upon consummation of a sale or transfer the lender may enforce a due-on-sale clause. If the borrower amends the loan as provided in subsection (1), then upon consummation of the sale or transfer the lender shall not enforce a due-on-sale clause.

(5) If a loan contract is amended as contemplated by this section, the mortgage securing the loan shall retain the same lien priority which it had immediately prior to such amendment or extension.

(6) Nothing in this act shall be construed to require a lender to extend the term of a residential real property loan.

History: 1984, Act 351, Eff. Oct. 15, 1985;—Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985.

445.1625 Limitations on enforcement of due-on-sale clause during term of land contracts or second mortgages.

Sec. 5. (1) With respect to any residential real property loan, other than a residential real property loan originated by a federal savings and loan association, a federal savings bank, a national bank, or a federally chartered credit union, if the property securing the loan was sold or transferred prior to October 15, 1982 either on any land contract which does not have a due-on-sale clause or subject to a second mortgage in favor of the seller which does not have a due-on-sale clause, then upon 1 or more subsequent sales or transfers of the property without a payoff of that land contract or second mortgage, a lender shall not enforce a due-on-sale clause in its loan contract.

(2) The limitations on enforcement of a due-on-sale clause in subsection (1) shall remain in force only for the term of any land contracts or second mortgages in effect on October 15, 1982 not containing a due-on-sale clause or until those land contracts or second mortgages are paid off, whichever occurs first.

History: 1984, Act 351, Eff. Oct. 15, 1985.

445.1626 Circumstances under which enforcement prohibited.

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Sec. 6. A lender shall not enforce a due-on-sale clause in a residential real property loan in any circumstances under which enforcement is prohibited under section 341(d) of the Garn-St. Germain depository institutions act of 1982, 12 U.S.C. 1701j-3, as currently in force.

History: 1984, Act 351, Eff. Oct. 15, 1985.

445.1626a Consent to sale or transfer of real property subject to residential window period loan containing due-on-sale clause.

Sec. 6a. Nothing in this act shall be construed to prohibit a lender, either before or after making a determination of the creditworthiness of a proposed buyer or transferee, from consenting in writing to a sale or transfer of real property that is subject to a residential window period loan containing a due-on-sale clause.

History: Add. 1985, Act 136, Imd. Eff. Oct. 15, 1985.

445.1627 Contract for sale or transfer of residential property subject to mortgage; provisions in boldface type.

Sec. 7. Each contract for the sale or transfer of residential property which is subject to a mortgage shall provide in boldface type substantially as follows:

"Seller understands that consummation of the sale or transfer of the property described in this agreement shall not relieve the seller of any liability that seller may have under the mortgage(s) to which the property is subject, unless otherwise agreed to by the lender or required by law or regulation."

History: 1984, Act 351, Eff. Oct. 15, 1985.

445.1628 Violation by lender; liability; action to recover civil fine; prohibited conduct by licensee; liability for civil fine; revocation of license; action for declaratory judgment or injunction; action for actual damages and attorneys' fees.

Sec. 8. (1) A lender who knowingly enforces or attempts to enforce a due-on-sale clause in violation of this act shall be liable for a civil fine not to exceed $5,000.00 for each offense. The attorney general or a prosecuting attorney may bring an action to recover a civil fine under this section.

(2) Any person licensed to do business in this state who, while carrying on that business, knowingly advises a person selling or transferring property securing a residential window period loan not to notify a lender as required by section 3 or who knowingly otherwise aids or assists a person in evading the enforcement of a due-on-sale clause enforceable under this act shall be liable for a civil fine not to exceed $5,000.00 for each offense and shall be subject to revocation of his or her license.

(3) The attorney general, a prosecuting attorney, or any other person may bring an action for 1 or both of the following:

(a) A declaratory judgment that a method, act, or practice violates this act.

(b) An injunction to enjoin a lender, real estate broker, or real estate salesperson which is engaging or is about to engage in a method, act, or practice which violates or would violate this act.

(4) In addition to any other remedy provided by this act, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or $250.00, whichever is greater, together with reasonable attorneys' fees.

History: 1984, Act 351, Eff. Oct. 15, 1985.

445.1629 Effective date.

Sec. 9. This act shall take effect October 15, 1985.

History: 1984, Act 351, Eff. Oct. 15, 1985.

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CONSUMER MORTGAGE PROTECTION ACT
Act 660 of 2002

AN ACT to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide for remedies.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

The People of the State of Michigan enact:

445.1631 Short title.

Sec. 1. This act shall be known and may be cited as the "consumer mortgage protection act".

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1632 Definitions.

Sec. 2. As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance services of the department of consumer and industry services.

(b) "Depository institution" means a bank, savings and loan association, savings bank, or a credit union chartered under state or federal law.

(c) "Home improvement installment contract" means an agreement of 1 or more documents covering the sale of goods or furnishing of services to a buyer for improvements to the buyer's principal dwelling located in this state used for occupancy of 4 or fewer families under which the buyer promises to pay in installments all or any part of the price of the goods or services.

(d) "Mortgage loan" means a loan or home improvement installment contract secured by a first or subordinate mortgage or any other form of lien or a land contract covering real property located in this state used as the borrower's principal dwelling and designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:

(*i*) Loans in which the proceeds are used to acquire the dwelling.

(*ii*) Reverse-mortgage transactions.

(*iii*) An open-end credit plan being a loan in which the lender reasonably contemplates repeated advances.

(e) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(f) "Reverse-mortgage" means a nonrecourse loan under which both of the following apply:

(*i*) A mortgage or other form of lien securing 1 or more advances is created in the borrower's principal dwelling.

(*ii*) The principal, interest, or shared appreciation or equity is payable only after the borrower dies, the dwelling is transferred, or the borrower ceases to occupy the dwelling as a principal dwelling.

(g) "Regulated lender" means a depository institution or a licensee or a registrant under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(h) "State and federal laws" means, individually and collectively, 1 or more of the laws or regulations of this state or the federal government which regulate or are applicable to a mortgage loan or a person when brokering, making, servicing, or collecting a mortgage loan, including, without limitation, the federal truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f, real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724, equal credit opportunity act, title VII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1691 to 1691f, fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 82 Stat. 81, fair credit report act, title VI of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1681 to 1681v, the homeowners protection act of 1998, Public Law 105-216, 112 Stat. 897, the fair debt collection practices act, title VIII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to 445.1614, and home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1422.

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History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1633 Compliance with state and federal laws.

Sec. 3. A person shall broker, make, or service mortgage loans in accordance with all applicable state and federal laws.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1634 Person making mortgage loan; prohibited conduct.

Sec. 4. (1) A person offering to make or making a mortgage loan shall not do either of the following:

(a) Charge a fee for a product or service if the product or service is not actually provided to the customer.

(b) Misrepresent the amount charged by or paid to a third party for a product or service.

(2) A lender in making a mortgage loan shall not finance as part of the loan single premium coverage for any credit life, credit disability, or credit unemployment.

(3) A person, appraiser, or real estate agent shall not make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a mortgage loan including, but not limited to, the borrower's ability to qualify for a mortgage loan or the value of the dwelling that will secure repayment of the mortgage loan.

(4) A lender shall not insert or change information on an application for a mortgage loan if the lender knows that the information is false and misleading and intended to deceive a third party that the borrower is qualified for the loan when in fact the third party would not approve the loan without the insertion or change.

(5) A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider any of the following factors in deciding whether a statement or misrepresentation is deceptive or misleading:

(a) The overall impression that the statement or representation reasonably creates.

(b) The particular type of audience to which the statement is directed.

(c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.

(6) A lender shall not condition the payment of an appraisal upon a predetermined value or the closing of the mortgage loan which is the basis of the appraisal.

(7) A person shall not directly or indirectly compensate, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the dwelling offered as security for repayment of the mortgage loan.

(8) A mortgage loan note shall not contain blanks regarding payments, interest rates, maturity date, or amount borrowed to be filled in after the note is signed by the borrower.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1635 Mortgage loan with term less than 5 years; payment schedule.

Sec. 5. A mortgage loan with a term of less than 5 years shall not have a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance. This section does not apply to loans with maturities of less than 1 year, if the purpose of the loan is a “bridge” loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1636 “Borrowers Bill of Rights” document.

Sec. 6. At the time a person applies for a mortgage loan, the lender shall provide the applicant the following document:

“BORROWERS BILL OF RIGHTS

1. You have the RIGHT to shop for the best loan for you and compare the charges of different mortgage brokers and lenders.

2. You have the RIGHT to be informed about the total cost of your loan including the interest rate, points, and other fees.

3. You have the RIGHT to obtain a “Good Faith Estimate” of all loan and settlement charges before you agree to the loan or pay any fees.

4. You have the RIGHT to know what fees are nonrefundable if you decide to withdraw your loan application.

5. You have the RIGHT to ask your mortgage broker to explain exactly what the mortgage broker will do for you.

6. You have the RIGHT to know how much the mortgage broker is getting paid by you and the

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lender for your loan.

7. You have the RIGHT to ask questions about charges and loan terms that you do not understand.

8. You have the RIGHT to a credit decision that is not based on your race, color, religion, national origin, sex, marital status, age, or whether any income is derived from public assistance.

9. You have the RIGHT to know the reason if your loan application is turned down.

10. You have the RIGHT to receive the HUD settlement costs booklet "Buying Your Home"."

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1637 Credit counseling; notice.

Sec. 7. At the time a person applies for a mortgage loan, the lender shall provide the applicant the following written notice regarding the value of receiving credit counseling before taking out a mortgage loan and a list of the nearest available HUD-approved credit counseling agencies:

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and all money you have invested in it, if you do not meet your obligations under the loan, including making all your payments.

Mortgage loans rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be applicable depending on the individual circumstances of a particular consumer's application.

You should shop around and compare loan rates and fees. This particular loan may have a higher rate and total points and fees than other mortgage loans. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors."

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1638 Examinations and investigations by commissioner.

Sec. 8. The commissioner may conduct examinations and investigations of a person over whom the commissioner has regulatory authority as necessary to determine whether the person is brokering, making, servicing, or collecting mortgage loans as required by this act.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1639 Violation of act.

Sec. 9. If the commissioner determines that a person is brokering, making, servicing, or collecting mortgage loans in violation of this act, the commissioner shall do 1 or more of the following:

(a) Initiate a cause of action under section 10.

(b) If the person is chartered, licensed, registered, regulated, or administered by the commissioner under a law of this state, the commissioner shall enforce the penalties and remedies under that law.

(c) Forward a complaint to the appropriate regulatory or investigatory authority.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1640 Action by attorney general or prosecuting attorney.

Sec. 10. The attorney general or the prosecuting attorney for the county where an alleged violation occurred may bring an action against a person to do 1 or more of the following:

(a) Obtain a declaratory judgment that a method, act, or practice of the person is a violation of this act.

(b) Enjoin a person who is engaging or about to engage in a method, act, or practice that is a violation of this act.

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(c) Obtain a civil fine of not more than $10,000.00 for the first offense and not more than $20,000.00 for the second and any subsequent offense.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1641 Unintentional and bona fide error.

Sec. 11. (1) A person is not liable for a violation under section 10 if the person shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error.

(2) A person is not liable for a violation under section 10 if, within 60 days after discovery of the violation and before the institution of an action under section 10, the person notifies the borrower or buyer of the violation and corrects the violation in a manner that, to the extent it is reasonably possible to do so, restores the borrower or buyer to the position in which the borrower or buyer would have been if the violation had not occurred.

(3) The person alleged to have violated this act has the burden of proving that he or she is not liable as provided under this section.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1642 Enforcement not limited.

Sec. 12. This act does not limit the authority of the commissioner, the attorney general, or a county prosecutor to enforce any law under which a person is chartered, organized, licensed, registered, regulated, or otherwise authorized to do business in this state.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1643 Model programs for financial education.

Sec. 13. (1) No later than December 31, 2003, the office of financial and insurance services shall develop and make available to local units of government, financial institutions, and other interested persons 1 or more model programs for financial education.

(2) The program required under this section shall be designed to teach personal financial management skills and the basic principles involved with saving, borrowing, investing, and protection against predatory and other fraudulent lending practices.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1644 Municipal actions; statutory conflict; preemption; severability.

Sec. 14. (1) The federal government and state solely regulate the business of brokering, making, servicing, and collecting mortgage loans in this state and the manner in which any such business is conducted.

(2) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to regulate, directly or indirectly, the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict with the uniform operation throughout the state of residential mortgage lending and is preempted.

(3) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to collect information about, require reporting of, pledges regarding, notices, or certifications concerning loans, lenders, applicants, deposits, or credit experiences, character, and criminal background checks of employees, agents, customers, or other persons is preempted by this act.

(4) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state that attempts to regulate the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict and is preempted, including, without limitation, if the ordinance, resolution, regulation, or other action does either of the following:

(a) Disqualifies a person, or its subsidiaries or affiliates, from doing business with the municipal corporation or other political subdivision based upon the acts or practices of the person or its subsidiaries or affiliates in brokering, making, servicing, or collecting mortgage loans.

(b) Imposes reporting requirements or other obligations upon a person, or its subsidiaries or affiliates, based upon the person's, or its subsidiaries' or affiliates', acts or practices in brokering, making, servicing, or collecting mortgage loans.

(5) If any provision of this section, or any application of any provision of this section, is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the provisions and applications of this section shall be severable.

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History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

445.1645 Standards; uniformity; preemption.

Sec. 15. (1) The laws of this state relating to the brokering, making, servicing, and collecting of mortgage loans prescribe rules of conduct upon citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constitute general laws of this state.

(2) Silence in the statutes of this state with respect to any act or practice in the brokering, making, servicing, or collecting of mortgage loans shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, making, servicing, or collecting of mortgage loans.

(3) It is the intent of the legislature to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of persons engaged in the brokering, making, servicing, or collecting of mortgage loans in this state.

History: 2002, Act 660, Imd. Eff. Dec. 23, 2002.

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MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT
Act 173 of 1987

AN ACT to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

The People of the State of Michigan enact:

445.1651 Short title.

Sec. 1. This act shall be known and may be cited as the "mortgage brokers, lenders, and servicers licensing act".

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1651a Definitions.

Sec. 1a. As used in this act, unless the context requires otherwise:

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Commissioner" means the commissioner of the office of financial and insurance services of the department of consumer and industry services or his or her authorized agent.

(c) "Construction loan" means a mortgage loan for the purpose of constructing a 1-to-4 family dwelling, which loan is approved and closed before completion of the construction of the improvement on the real property.

(d) "Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(e) "Depository financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

(f) "Executive officer" means an officer, member, or partner of a licensee or registrant, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(g) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Firm commitment" means an underwriting in which a broker-dealer commits to buy the mortgage loan or the entire issue of securities based upon or backed by 1 or more mortgage loans and assumes all financial responsibility for any unsold securities.

(i) "Individual investor" means a person residing in this state or having its principal place of business in this state, other than a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, pension or profit sharing plan, the assets of which are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

(j) "License" means a license issued under this act.

(k) "Licensee" means a person licensed or required to be licensed under this act.

(*l*) "Mortgage broker" means a person who, directly or indirectly, does 1 or both of the following:

(*i*) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(*ii*) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.

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(m) “Mortgage lender” means a person who, directly or indirectly, makes or offers to make mortgage loans.

(n) “Mortgage loan” means a loan secured by a first mortgage on real property located in this state and used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families. A mortgage loan does not include a home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(o) “Mortgage servicer” means a person who, directly or indirectly, services or offers to service mortgage loans.

(p) “Person” means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(q) “Real estate broker” means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(r) “Real estate salesperson” means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(s) “Register” means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.

(t) “Registrant” means a person registered or required to be registered under this act.

(u) “Service” means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 391, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1652 Mortgage broker, mortgage lender, or mortgage servicer; license or registration required; exemption; residential mortgage originator; compensation; words contained in name or assumed name.

Sec. 2. (1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless 1 or more of the following apply:

(a) The person is solely performing services as an employee of only 1 mortgage broker, mortgage lender, or mortgage servicer.

(b) The person is exempted from the act under section 25.

(c) The person is licensed as a class I licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(d) The individual is an employee of a professional employer organization, as that term is defined in section 4 of the single business tax act, 1975 PA 228, MCL 208.4, solely acting as a residential mortgage originator of only 1 mortgage broker or mortgage lender. The mortgage broker or mortgage lender shall do all of the following:

(*i*) Direct and control the activities of the individual under this act.

(*ii*) Be responsible for all activities of the individual and assume responsibility for the individual’s actions that are covered by the proof of financial responsibility deposit required under section 4.

(2) A person that is licensed to make regulatory loans under the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, or is licensed to make secondary mortgage loans under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and is registered with the commissioner shall file with the commissioner an application for a license under section 3(1) or shall discontinue all activities that are subject to this act.

(3) Unless a residential mortgage originator is otherwise licensed or registered under this act, a residential mortgage originator shall not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, mortgage lender, or mortgage servicer other than the employer of the residential mortgage originator.

(4) Unless a residential mortgage originator is otherwise licensed or registered under this act, a mortgage broker, mortgage lender, or mortgage servicer shall not pay directly or indirectly any compensation,

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commission, fee, points, or other remuneration or benefits to a residential mortgage originator other than an employee of the mortgage broker, mortgage lender, or mortgage servicer. As used in this subsection and subsection (3), "residential mortgage originator" means a person who assists another person in obtaining a mortgage loan.

(5) A mortgage broker, mortgage lender, or mortgage servicer that was exempt from regulation under this act and is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company that does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities subject to this act.

(6) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, the person subject to this act shall not include in its name or assumed name, the words "bank", "banker", "banking", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee or registrant to use the term "mortgage banker" or "mortgage banking" in its name or assumed name. A person subject to this act whose name or assumed name on January 1, 1995 contained a word prohibited by this section may continue to use the name or assumed name.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 159, Eff. Sept. 1, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 4, Imd. Eff. Feb. 7, 2002;—Am. 2005, Act 113, Imd. Eff. Sept. 22, 2005.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan Compiled Laws.

445.1653 License or renewal; application; form; investigation; determination; issuance; indemnification.

Sec. 3. (1) An application for, or renewal of, a license shall be made in writing to the commissioner on a form prescribed by the commissioner. If the commissioner determines after investigation that the experience, character, business reputation, and general fitness of the applicant and its officers, directors, shareholders, partners, and affiliates command the confidence of the public and warrant the belief that the applicant and its officers, directors, shareholders, partners, and affiliates will comply with the law and that grounds for revoking, suspending, or denying a license under this act do not exist, the commissioner shall issue a license to, or renew the license of, the applicant to act as a mortgage broker, mortgage lender, or mortgage servicer.

(2) A license issued under this section does not approve the use of or indemnify the licensee against claims for the improper use of the business name stated in the license.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1654 Proof of financial responsibility.

Sec. 4. (1) Except as otherwise provided in this section, at the time of filing an application for a license or renewal of a license, the applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(*i*) $25,000.00 for an applicant who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan or who acts as a mortgage lender.

(*ii*) $125,000.00 for an applicant who acts as a mortgage servicer.

(b) Provide proof of financial responsibility by 1 of the following:

(*i*) A corporate surety bond payable to the commissioner, executed by a corporate surety approved by the commissioner, which expires no earlier than the date the license shall expire.

(*ii*) An irrevocable letter of credit upon which the applicant is the obligor, which expires no earlier than the date the license shall expire, issued by a bank, savings bank, savings and loan association, or credit union the deposits of which are insured by an agency of the federal government, and the terms of which letter of credit are approved by the commissioner.

(2) The bond or letter of credit deposited under subsection (1) shall be conditioned upon the conduct of the business in accordance with the provisions of this act and all rules promulgated by the commissioner, and the payment of all money that becomes due.

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(3) In place of depositing a bond or letter of credit, an applicant may pay a nonrefundable administrative fee established by the commissioner not to exceed $100.00 and furnish 1 of the following as proof of financial responsibility:

(a) Deposit with the state treasurer, under terms prescribed by the commissioner, obligations of the United States, or obligations which are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or any political subdivision of the United States, with a maturity date of 3 years or less, in an amount equal to, or greater than, the amount of the required bond. Interest earned under obligations shall accrue to the account of the applicant.

(b) Deposit with the state treasurer, under terms prescribed by the commissioner, a certificate of deposit of a federally insured financial institution with a maturity date of 3 years or less for an amount payable which is equal to, or greater than, the amount of the required bond and which is not available for withdrawal except by direct order of the commissioner. Interest earned under the certificate shall accrue to the account of the applicant.

(4) Upon application as prescribed by the commissioner, the commissioner may reduce, waive, or modify the requirements under this section for a mortgage servicer who services not more than 300 mortgage loans and who does not collect money for the purpose of paying taxes or insurance pursuant to the mortgage loan.

(5) The commissioner shall waive the requirements of this section and section 5 upon application by a mortgage servicer who is a licensed real estate broker or real estate salesperson, services more than 75 land contracts, has a satisfactory record of compliance with applicable state and federal law, and does not engage in any other activity regulated by this act.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1655 Minimum net worth.

Sec. 5. A licensee who acts as a mortgage broker and who receives funds from a prospective borrower before the closing of the mortgage loan shall maintain a net worth of not less than $25,000.00. A licensee who acts as a mortgage lender shall maintain a net worth of not less than $25,000.00. A licensee who acts as a mortgage servicer shall maintain a net worth in an amount determined by the commissioner not exceeding $100,000.00. Net worth shall be determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. Net worth shall be disclosed on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and shall be computed in accordance with generally accepted accounting principles. The following assets shall be excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than that of the applicant.

(b) Any asset except construction loans receivable, secured by first mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure, or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the market value of the assets.

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1656 Mandatory registration; rights of registrant; applicability of certain provisions; licensing or registration of real estate broker or salesperson; improper use of business name.

Sec. 6. (1) The following shall register with the commissioner on a form prescribed by the commissioner:

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(a) A mortgage broker, mortgage lender, or mortgage servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation.

(b) A mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.

(c) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws, who acts as a mortgage broker for not more than 1 licensee or 1 registrant, or who acts as a mortgage broker, mortgage lender, or mortgage servicer only in connection with real estate sales in which the real estate broker or salesperson affiliated with the real estate broker is engaged and who receives for such services additional compensation beyond the customary commission on real estate sales.

(d) A mortgage broker, mortgage lender, or mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

(2) A registrant is not required to comply with section 3, 4, or 5 and is not subject to annual examination by the commissioner.

(3) A mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution shall not be subject to section 29(1)(b) or (c).

(4) Notwithstanding section 25(m), a mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution may register and become subject to the provisions of the act applicable to registrants.

(5) If a real estate broker or real estate salesperson acts as a mortgage broker, mortgage lender, or mortgage servicer not in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, the real estate broker or real estate salesperson shall be licensed or registered as otherwise required under this act.

(6) A real estate broker or real estate salesperson, in connection with real estate sales in which the real estate broker or real estate salesperson affiliated with the real estate broker is engaged, who acts as a mortgage broker on 10 or fewer mortgage loans in any 12-month period from July 1 to June 30 and who receives for such services additional compensation beyond the customary commission on real estate sales shall be exempt from the registration or licensing requirements of this act for that 12-month period. If the broker and all real estate salespersons affiliated with the broker in aggregate brokered more than 30 mortgage loans as described in this subsection in the same 12-month period from July 1 to June 30, then such broker shall obtain a license or shall register as required by this act.

(7) A registration accepted by the commissioner under this section does not approve the use of or indemnify the registrant against claims for the improper use of the business name stated in the registration.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1657 Expiration of registration or license; renewal; application; fee; limitation; financial statement.

Sec. 7. (1) A registration or license, unless it is renewed, shall expire June 30 of each year. A registration or license may be renewed by filing a registration or an application for license renewal and paying the annual operating fee for the succeeding year. The registration or application and payment shall be received by the commissioner on, or before, June 15 of each year.

(2) Not later than 90 days after the close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) A form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which report the licensee or registrant represents to the commissioner to be true and complete.

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(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1658 Payment of investigation and annual operating fees; establishment of annual fee schedule; limitations; fees nonrefundable; action for delinquent payment; licensee or registrant report; penalties; disposition of fees; basis.

Sec. 8. (1) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, the applicant shall pay to the commissioner a fee for investigating the applicant and the minimum annual operating fee established by the commissioner under subsection (3). To renew a license that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee. At the time of filing a registration or a renewal of a registration, a registrant shall pay to the commissioner an annual operating fee as provided by subsection (3).

(2) If the initial or renewed license or registration as provided in subsection (1) would have an effective date within 6 months of the expiration date provided for in section 7, the initial or renewal annual operating fee for that license or registration shall be 1/2 of the annual operating fee.

(3) The commissioner shall annually establish the schedule of fees sufficient to pay, but not to exceed, the bureau's reasonably anticipated costs of administering this act. The fees are as follows:

(a) For the investigation of an applicant for a license, not less than $400.00 or more than $1,000.00.

(b) Except as set forth in subdivision (c), a licensee or registrant annually shall pay an operating fee based upon the number of closed mortgage loans the licensee or registrant brokered to other parties, the number of mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The operating fee during the first year after enactment of this amendatory language shall be not less than $250.00 and not more than $2,500.00. Thereafter, in the discretion of the commissioner, subject to the limitation set forth in this subsection, the maximum operating fee may be increased at an annual rate of not more than 10% in the second, third, and fourth years following enactment, and in the fifth and subsequent years, at an annual rate of not more than the annual increase for the immediately preceding 12-month period in the Detroit consumer price index as reported by the United States department of labor. For purposes of this subdivision, “mortgage loan” includes only mortgage loans subject to this act.

(c) For amending or reissuing a license or registration, not less than $50.00 or more than $200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by bureau employees who travel out of state to examine the records of the licensee or investigate the licensee or registrant and the cost of independent investigators employed under section 20(1)(e).

(4) Fees received pursuant to this act are not refundable.

(5) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees or penalties together with interest and costs.

(6) A licensee or registrant who fails to submit to the commissioner a report required by section 7 or section 21 is subject to a penalty of $25.00 for each day the report is delinquent or $1,000.00, whichever is less.

(7) A licensee or registrant whose license or registration renewal fee is not received on or before June 30 is subject to a penalty of $25.00 for each day the fee is delinquent or $1,000.00, whichever is less.

(8) Money received under this act shall be deposited in the state treasury and credited to the financial institutions bureau to be used only for the operation of the financial institutions bureau.

(9) The annual operating fee set by the commissioner under subsection (3)(b) shall be based upon information in reports filed under section 21.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1996, Act 210, Eff. July 2, 1996.

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Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1659 Transfer or assignment of license or registration.

Sec. 9. A license shall not be transferred or assigned without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee which is a corporation, or more than 25% of the interest in a licensee which is a partnership or other unincorporated association, shall be considered to be a transfer of the license. A registration shall not be transferred or assigned.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1660 Surrender, revocation, or suspension of license or registration; loss or destruction of license or registration; affidavit.

Sec. 10. (1) A licensee or registrant may surrender a license or registration by delivering to the commissioner the license or registration with written notice that the licensee or registrant surrenders the license or registration. The surrender, revocation, or suspension of a license or registration under this act shall not affect the licensee's or registrant's civil or criminal liability for acts committed prior to the surrender, revocation, or suspension. The surrender of a license or registration does not affect a proceeding to suspend or revoke a license or registration.

(2) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration shall not impair or affect the obligation of a preexisting contract between the licensee or registrant and another person.

(3) A licensee or registrant whose license or registration has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee or registrant surrenders the license or registration.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1661 Powers of commissioner generally.

Sec. 11. (1) The commissioner shall exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state.

(2) In addition to the other powers granted to the commissioner by this act, the commissioner shall have all of the following powers:

(a) To promulgate reasonable rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement and administer this act.

(b) To deny an application for a license.

(c) To conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(d) To advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating this act. The attorney general or prosecuting attorney may take appropriate legal action to enjoin the operation of the business or prosecute violations of this act.

(e) To bring an action in the Ingham county circuit court in the name and on behalf of this state against the licensee, registrant, or any other person who is participating in, or about to participate in, any unsafe or injurious practice or act in violation of this act or a rule promulgated under this act, to enjoin the person from participating in or continuing the practice or engaging in the act.

(f) To order a person to cease and desist from a violation of this act or a rule promulgated under this act in accordance with section 16.

(g) To suspend or revoke a license or registration in accordance with section 29.

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(h) To require that restitution be made in accordance with section 29.

(i) To assess a civil fine in accordance with section 29.

(j) To censure a licensee or registrant.

(k) To issue an order to prohibit a person from being employed by, an agent of, or control person of a licensee or registrant as provided under section 18a.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 2002, Act 391, Imd. Eff. May 30, 2002.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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445.1662 Notice of intention to enter order of license or registration, suspension or revocation, or refusal to issue license; hearing; final order.

Sec. 12. (1) Notice to a licensee or registrant of intention to enter an order of license or registration, suspension or revocation, or notice to an applicant of a refusal to issue a license shall be given in writing, served personally or sent by certified mail to the licensee, registrant, or applicant.

(2) Within 20 days after the notice of the intention to enter an order of license or registration, suspension or revocation, or a refusal to issue a license or registration under subsection (1), the licensee, registrant, or applicant may request a hearing to contest the order or refusal. If a hearing regarding suspension or revocation is not requested, the commissioner shall enter a final order regarding the suspension or revocation. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1663 Complaint; investigation; federal regulatory authority.

Sec. 13. (1) The attorney general, the commissioner, or any other person may file a complaint with the commissioner alleging that a person has violated this act or a rule promulgated or an order issued under this act. If the complaint is made by the commissioner, he or she shall designate 1 or more employees of the financial institutions bureau to act as the person making the complaint. Upon receipt of a complaint, the commissioner may begin an investigation pursuant to the provisions of this act.

(2) If a complaint is received against a registrant which is a subsidiary of a federally chartered depository financial institution, a copy of the complaint shall be immediately sent to the appropriate federal regulatory authority. The commissioner shall attempt to determine the disposition of the complaint and shall make no investigation of the complaint if the complaint is being adequately pursued by the appropriate federal regulatory authority.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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445.1664 Provisions applicable to investigation.

Sec. 14. All of the following shall apply to an investigation conducted pursuant to section 13:

(a) The employees or agents of the financial institutions bureau shall complete the investigation within a reasonable period of time.

(b) If the investigation does not disclose evidence of a violation of this act or a rule promulgated or an order issued under this act, the complaint shall not be used in any subsequent decision by the commissioner to issue, renew, suspend, or revoke the license or suspend or revoke the registration of the person against whom the complaint was filed. The results of the investigation shall be forwarded to the complainant and the person against whom the complaint was filed.

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(c) In addition to any other action authorized by law, if the investigation discloses evidence of a violation of this act or a rule promulgated or an order issued under this act, the commissioner or the attorney general may prepare a formal complaint to be served on the person against whom the allegations are made and a copy of the formal complaint shall be provided to the complainant.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1665 Summary suspension of license or registration; order; affidavit; dissolution of summary suspension order; record.

Sec. 15. (1) After an investigation has been conducted pursuant to section 13, the commissioner may issue an order summarily suspending a license or registration pursuant to section 92 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.292 of the Michigan Compiled Laws, based on an affidavit by a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit, on information and belief, that an imminent threat of financial loss or imminent threat to the public welfare exists.

(2) Pursuant to a proceeding commenced under section 92 of Act No. 306 of the Public Acts of 1969, an administrative law hearings examiner shall grant a request to dissolve a summary suspension order unless the examiner finds that an imminent threat of financial loss or imminent threat to the public welfare exists which requires emergency action and continuation of the summary suspension order.

(3) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1666 Cease and desist order; hearing; violation; injunction.

Sec. 16. (1) After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1667 Remedies cumulative.

Sec. 17. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license shall be in addition to and not in place of an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of

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financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1668 Notice of hearing on complaint; service; informal conference; settlement; compliance; hearing.

Sec. 18. (1) After an investigation has been conducted and a formal complaint has been prepared pursuant to section 14(c), the commissioner shall serve upon the person against whom the complaint was filed, and the person who filed the complaint, a notice of a hearing on the complaint pursuant to section 71 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.271 of the Michigan Compiled Laws, and a notice of an opportunity to settle the complaint through an informal conference.

(2) A person upon whom service has been made pursuant to this section may request, within 15 days after the receipt of notice, an opportunity to settle a complaint in an informal conference. An informal conference shall be held only if the person against whom a complaint has been filed agrees to the informal conference. If an informal conference is held, the hearing on the complaint shall be postponed.

(3) An informal conference may result in a settlement, consent order, waiver, default, or other method of settlement agreed upon by the person complained against and the commissioner. A settlement may include a license or registration revocation or suspension, restitution, or a penalty provided for in this act.

(4) This act does not prevent a person against whom a complaint has been filed from showing compliance with this act, a rule promulgated under this act, or an order issued under this act, as provided in chapter 4 of Act No. 306 of the Public Acts of 1969.

(5) If an informal conference is not held, or does not result in a settlement of a complaint, a hearing on the complaint shall be held as provided in chapter 4 of Act No. 306 of the Public Acts of 1969.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1668a Fraud; prohibition; notice; hearing; order.

Sec. 18a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, “fraud” shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being

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employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668b Hearing; final decision; judicial review; effect of review on order.

Sec. 18b. (1) A hearing under section 16 or 18a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 16 or 18a may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668c Enforcement of order; jurisdiction.

Sec. 18c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 15, 16, or 18a.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668d Violation as misdemeanor; penalty.

Sec. 18d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 18a is guilty of a misdemeanor punishable by a fine of not more than $5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1668e Violation of order; exceptions.

Sec. 18e. A control person who is subject to an order issued under section 18a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

History: Add. 2002, Act 391, Imd. Eff. May 30, 2002.

445.1669 Continuing to service mortgage loan or making mortgage after suspension or revocation of license or registration; termination of commitment; refund.

Sec. 19. Nothing in this act shall preclude a person whose license or registration has been suspended or revoked, summarily or otherwise, from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision of the presiding officer in the contested case suspending or revoking the license or registration. Nothing in this act shall preclude a person whose license or registration has been suspended or revoked, summarily or otherwise, from making a mortgage loan pursuant to a commitment to make a mortgage loan issued by the person prior to the suspension or revocation. However, a person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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445.1670 Powers of commissioner in conducting examination or investigation; conduct of person subpoenaed as misdemeanor; conduct of investigation.

Sec. 20. (1) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Compel the attendance of a person by subpoena.

(b) Administer oaths.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee or registrant, or an affiliate of a licensee or registrant, maintains business related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:

(*i*) To the attorney general.

(*ii*) To any regulatory agency.

(*iii*) In connection with an enforcement action brought pursuant to this or another applicable act.

(*iv*) To law enforcement officials.

(*v*) To persons authorized by the Ingham county circuit court to receive the information.

(e) Employ independent investigators to conduct a part or all of the investigation, in the case of an investigation other than an examination.

(2) A person subpoenaed under this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

(3) Unless circumstances warrant additional examinations, the commissioner is entitled to conduct 1 examination of each licensee during the calendar year. The commissioner may conduct an investigation of a licensee or registrant against whom a complaint has been filed.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1671 Books, accounts, records, and documents; preservation and examination; reports; false statement as felony; penalty.

Sec. 21. (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner, conducted under the license or registration to enable the commissioner to determine whether the business of the licensee or registrant is conducted pursuant to this act and the rules promulgated under this act. The preservation of records by reproduction pursuant to the records media act constitutes compliance with this section. If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 8.

(2) A licensee or registrant shall preserve and keep available for examination by the commissioner each mortgage loan document in its possession or control, including, but not limited to, the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the mortgage loan is transferred or assigned, or the expiration of 3 years after the date the mortgage loan is closed, whichever occurs first. If the mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, land contract, truth-in-lending disclosure statements, and settlement statements in its possession or control for 3 years after the date the mortgage loan is transferred or assigned. Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a mortgage loan for the period of time required by state or federal law. A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 3 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

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(3) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required pursuant to this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required pursuant to this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1992, Act 51, Imd. Eff. May 19, 1992;—Am. 1992, Act 206, Imd. Eff. Oct. 5, 1992.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

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445.1672 Violations generally.

Sec. 22. It is a violation of this act for a licensee or registrant to do any of the following:

(a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.

(b) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(c) Intentionally or due to gross or wanton negligence, repeatedly fail to provide borrowers material disclosures of information as required by law.

(d) Suppress or withhold from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fail to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by the licensee that the borrower is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under this act.

(h) To be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuse or fail to pay, within a reasonable time, those expenses assessed to the licensee or registrant under this act.

(j) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fail to make a mortgage loan in accordance with a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment before the expiration of the commitment.

(*l*) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Take a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

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(n) Except as provided under section 18e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 2002, Act 391, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1672a Mortgage loans; prohibited advertising.

Sec. 22a. (1) A licensee or registrant shall not, directly or indirectly, make a false, misleading, or deceptive advertisement regarding mortgage loans or the availability of mortgage loans.

(2) A licensee shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to mortgage loan applicants who meet the standards or qualifications prescribed by the licensee.

History: Add. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1673 Reasonable and necessary charges; terms and conditions of guarantee.

Sec. 23. (1) A licensee or registrant may require a borrower to pay reasonable and necessary charges which are the actual expenses incurred by the licensee or registrant in connection with the making, closing, disbursing, extending, readjusting, or renewing of a mortgage loan and a loan processing fee. The charges shall be in addition to interest authorized by law, and are not a part of the interest collected or agreed to be paid on the mortgage loan within the meaning of the law of this state which limits the rate of interest which may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant. This section is not intended to override the federal preemption of state usury laws contained in the depository institutions deregulation and monetary control act of 1980, Public Law 96-221.

(2) A licensee or registrant which assesses or accepts a fee to guarantee a specified rate of interest on a mortgage loan shall specify the terms and conditions of the guarantee in writing. The terms and conditions of the guarantee shall not extend beyond the expiration of the guarantee unless extended in writing by all the parties.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1674 Annual statement and ledger history of borrower's account; fee prohibited.

Sec. 24. (1) A mortgage servicer shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid during such period, and the amounts deposited into escrow and disbursed from escrow during the period. In addition, within 25 days after receipt of a written request from the borrower, a mortgage servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the account, but in no event for a period in excess of the immediately preceding 12-month period, and the total unpaid balance. In no event shall a mortgage servicer be obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in any 12-month period.

(2) A fee shall not be charged the borrower for the annual statement or for 1 ledger history furnished to a borrower in a 12-month period.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1675 Applicability of act.

Sec. 25. This act does not apply to any of the following:

(a) A depository financial institution whether or not the depository financial institution is acting in a capacity of a trustee or fiduciary.

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(b) A salesperson acting as an agent for a residential builder or residential maintenance and alteration contractor, or a residential builder or residential maintenance and alteration contractor licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, when a mortgage is made or negotiated in connection with the sale or financing of a residential structure or improvement constructed or improved by that residential builder or residential maintenance and alteration contractor.

(c) A real estate broker or real estate salesperson who is not a mortgage broker, mortgage lender, or mortgage servicer, or who only acts as a mortgage broker in connection with a real estate sale or lease and acts without additional compensation beyond the customary commission on the sales or leases.

(d) A real estate salesperson who acts for a real estate broker as a mortgage broker, mortgage lender, or mortgage servicer and who receives for the services compensation only from the real estate broker for which the salesperson is an agent or employee.

(e) A person licensed under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, not making, brokering, or servicing mortgage loans as described in this act in a 12-month period from July 1 to June 30.

(f) Agencies or corporate instrumentalities of the United States and of this state and its political subdivisions, including the public employees' retirement system.

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from July 1 to June 30.

(i) A mortgage servicer that in the aggregate with any affiliates services only 75 or fewer land contracts, of which 10 or fewer require the collection of money for the payment of taxes or insurance. This subdivision and subdivision (h) do not exempt a mortgage servicer who collects money for the payment of taxes or insurance from the provisions of 1966 PA 125, MCL 565.161 to 565.164. All fees shall be returned to any mortgage servicer described in this subdivision who applied for a license and paid the fees required by this act and who on December 27, 1988 is exempted from licensing.

(j) An individual licensed to practice law in this state and not engaged in the business of negotiating loans secured by real property, when the individual renders services in the course of his or her practice as an attorney-at-law.

(k) A person who makes mortgage loans exclusively for the benefit of employees of that person if the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

(*l*) A person acting as a fiduciary with respect to any employee pension benefit plan qualified under the internal revenue code who makes mortgage loans solely to plan participants from plan assets.

(m) A mortgage broker, mortgage lender, or a mortgage servicer which is a subsidiary or affiliate of a depository financial institution or a subsidiary or affiliate of a holding company of a depository financial institution which depository financial institution maintains its main office or a branch office in this state.

(n) A nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, title VI of Public Law 95-557, 42 U.S.C. 8101 to 8107.

(o) A person determined by the commissioner to meet the qualifications established under section 25a.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 451, Imd. Eff. Dec. 27, 1988;—Am. 1994, Act 260, Imd. Eff. July 5, 1994;—Am. 1996, Act 210, Imd. Eff. May 22, 1996;—Am. 1998, Act 371, Imd. Eff. Oct. 20, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1675a Exemptions; filing affidavit; failure to meet qualifications.

Sec. 25a. (1) Except for the requirements of section 23, the commissioner may exempt from the requirements of this act a person the commissioner believes merits the confidence of the community and demonstrates all of the following:

(a) Is exempt from federal income taxes under section 501(c) of the internal revenue code of 1986.

(b) Administers a mortgage loan program funded or sponsored by 1 or more depository financial institutions, state or federal governmental entities, or charitable, religious, or other nonprofit organizations.

(c) Its mortgage loan program is targeted exclusively to persons that would not otherwise have access to affordable mortgage loans from traditional mortgage lending sources.

(d) Its housing development efforts have the support of the agency of its local governmental jurisdiction responsible for community development.

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(e) Its mortgage lending activity is limited to a defined geographic area in this state, not larger than a county in the case of a metropolitan statistical area.

(f) Has the capacity to accomplish its business plan.

(g) Does not directly or indirectly share with another person any portion of fees paid to the organization in connection with a mortgage loan.

(h) That it will comply with state and federal law and with the spirit and intent of section 22a.

(i) Does not service mortgage loans.

(2) Notwithstanding subsection (1)(i), the commissioner may issue an exemption to a person that services mortgage loans if the person has complied with subsection (1)(a) through (h) and the commissioner determines the exemption is in the public interest.

(3) Not later than February 1 of every second year following the commissioner's determination that an organization meets the qualifications under subsection (1) or (2), the organization shall file an affidavit that it continues to meet the qualifications.

(4) An organization that has been determined to meet the qualifications of subsection (1) or (2) and subsequently fails to meet 1 or more of those qualifications shall within 90 days register or file an application for license under section 3(1) or discontinue activities that would require registration or licensure under this act.

History: Add. 1998, Act 371, Imd. Eff. Oct. 20, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1676 Laws to which mortgage loan subject.

Sec. 26. Notwithstanding the place of execution, nominal or real, of a mortgage loan, if the real property is located in this state, the mortgage loan is subject to this act and all other applicable laws of this state.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1677 Period within which to file application for license and proof of financial responsibility, to pay fees, or to register.

Sec. 27. Any mortgage broker, mortgage lender, or mortgage servicer engaged in activities covered by this act on the effective date of this act shall have 90 days after the effective date of this act in which to file an application for a license together with proof of financial responsibility as required by section 4, and to pay any required fees, or to register and pay any required registration fee. During the 90-day period, and until the commissioner acts on the application, the applicant shall be entitled to operate without a license but shall otherwise comply with all other provisions of this act.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1678 Civil or criminal liability.

Sec. 28. This act does not relieve a person from civil or criminal liability under other laws of this state or any federal law.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1679 Prohibited conduct; misdemeanor; penalty; violation of act or rules; civil fine; suspension or revocation of license or registration; refusal to issue or renew license; proceedings subject to §§ 24.201 to 24.328; bona fide error.

Sec. 29. (1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than $5,000.00, or imprisonment for not more than 3 years, or both:

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(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act.

(b) Transfers or assigns a mortgage loan or a security directly representing an interest in 1 or more mortgage loans before the disbursement of 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower. This subdivision does not apply to any of the following:

(*i*) A land contract not considered to be an equitable mortgage.

(*ii*) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the loan proceeds for a limited period of time.

(*iii*) A construction loan.

(*iv*) A loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the mortgage loan.

(c) Transfers or assigns a mortgage loan or a security representing an interest in 1 or more mortgage loans to an individual investor unless 1 or more of the following apply:

(*i*) The transfer or assignment is made through a broker-dealer which is a member of the New York stock exchange.

(*ii*) The transfer or assignment is made through a broker-dealer who meets all of the following criteria:

(A) The broker-dealer is registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(B) The broker-dealer is not an affiliate of the mortgage lender unless the person acquired the broker-dealer registration, directly or indirectly, before September 1, 1987 under Act No. 265 of the Public Acts of 1964, was affiliated with a mortgage lender before September 1, 1987, and has continuously maintained that registration subsequent to September 1, 1987. For purposes of this subparagraph, if an aggregate of more than 10% of the outstanding voting stock or interest in a corporation, unincorporated organization, partnership, or other legal entity that is a broker-dealer or mortgage lender is sold, transferred, assigned, or otherwise conveyed subsequent to September 1, 1987, the registration shall be considered to not have been continuously maintained.

(C) The broker-dealer acquired the mortgage loan or security on a firm commitment.

(*iii*) The transfer or assignment is made to a person who the transferor or assignor believes, or has reasonable grounds to believe, is 1 of the following:

(A) A business entity having either net income from operations after taxes in excess of $100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of $1,000,000.00 at the time of purchase.

(B) An individual who, after the purchase, has an investment of more than $50,000.00 in such loans or securities, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of $100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of $1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under Act No. 265 of the Public Acts of 1964 with respect to the merits and risks of the prospective investment.

(*iv*) A transferor or assignor does not maintain its principal place of business in this state and the transferee or assignee is not a resident of this state and does not maintain its principal place of business in this state.

(2) If the commissioner finds that a licensee or registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee or registrant of not more than $1,000.00 for each violation, except that the licensee, registrant, or a person shall not be fined more than $10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation,

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the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(4) Subsection (2) does not apply to a violation of this act that results from a bona fide error that occurs notwithstanding the adoption and observance of reasonable procedures intended to prevent the occurrence of the error.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987;—Am. 1996, Act 210, Imd. Eff. May 22, 1996.

Constitutionality: In*Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1680 Effect of noncompliance on validity or enforceability of mortgage loan.

Sec. 30. Failure to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, unless the mortgage loan is invalid or unenforceable under the provisions of any other laws of this state or under any federal law.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1681 Action to obtain declaratory judgment, injunction, or actual damages; limitation.

Sec. 31. (1) Whether or not a person seeks damages or has an adequate remedy at law, any person, prosecutor, or the attorney general may bring an action, including a class action, to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Obtain an injunction against a person who is engaging in or is about to engage in a method, act, or practice that violates this act.

(c) Except as limited by subsection (2), recover actual damages resulting from a violation of this act, or $250.00, whichever is greater, together with reasonable attorney fees and the costs of bringing the action.

(2) If the licensee or registrant establishes by a preponderance of the evidence that the failure to comply with the act was not willful, intentional, or the result of gross or wanton negligence, the amount recovered pursuant to subsection (1)(c) shall not exceed actual damages.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1682 Conservatorship.

Sec. 32. (1) Notwithstanding the provisions of section 19, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing mortgage loans in accordance with the terms of this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require of the conservator a bond and security as the commissioner considers proper. The commissioner may appoint as conservator 1 of the examiners of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred by it in connection with the conservatorship. Amounts reimbursed shall be paid into the revolving fund provided for in subsection (4). Upon appointment under this subsection, a conservator shall become an employee of the bureau. All expenses of a conservatorship shall be paid out of the assets of the licensee or registrant, upon the approval of the commissioner. The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and possession of the books and records of the licensee or registrant. Notwithstanding the foregoing, the licensee or registrant may cause the rights to service mortgage loans to be transferred or assigned to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the mortgage loans are serviced in accordance with the terms of this act and the servicing contracts.

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(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of mortgage loans subject to any terms, conditions, and limitations as the commissioner may prescribe.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorships under this act shall be deposited in the state treasury and shall be directed to a bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the bureau for expenses incurred by the bureau in connection with conservators of licensees or registrants.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1683 Conditional effective date.

Sec. 33. This act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) House Bill No. 4702.

(b) House Bill No. 4703.

History: 1987, Act 173, Imd. Eff. Nov. 18, 1987.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1684 Claims filed against proof of financial responsibility.

Sec. 34. (1) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under section 4 in a manner that, in his or her discretion, best protects the public interest.

(2) Claims may only be filed against a licensee's proof of financial responsibility as provided under this section by the licensee's borrowers, mortgage loan applicants, loan servicing customers, and the commissioner.

(3) Claims filed against a proof of financial responsibility by a borrower or loan applicant shall involve only mortgage loans or mortgage applications secured or to be secured by residential real property located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections charged by the licensee and paid by the claimant to the licensee.

(4) The commissioner may file a claim against a proof of financial responsibility for payment of fines or fees due and payable to the commissioner or the bureau and reimbursement of expenses incurred in investigating the licensee and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(5) In the event that valid claims exceed the amount of the proof of financial responsibility, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

History: Add. 1996, Act 210, Imd. Eff. May 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

CREDIT SERVICES ACT
Act 361 of 1988

445.1701-445.1708 Repealed. 1992, Act 72, Imd. Eff. June 2, 1992;—1994, Act 160, Imd. Eff. June 13, 1994.

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PRESERVATION OF PERSONAL PRIVACY
Act 378 of 1988

AN ACT to preserve personal privacy with respect to the purchase, rental, or borrowing of certain materials; and to provide penalties and remedies for violation of this act.

History: 1988, Act 378, Eff. Mar. 30, 1989.

Popular name: Video Rental Privacy Act

The People of the State of Michigan enact:

445.1711 Definitions.

Sec. 1. As used in this act:

(a) "Customer" means a person who purchases, rents, or borrows a book or other written material, or a sound recording, or a video recording.

(b) "Employee" means a person who works for an employer in exchange for wages or other remuneration.

(c) "Employer" means a person who has 1 or more employees.

History: 1988, Act 378, Eff. Mar. 30, 1989.

Popular name: Video Rental Privacy Act

445.1712 Record or information concerning purchase, lease, rental, or borrowing of books or other written materials, sound recordings, or video recordings; disclosure prohibited.

Sec. 2. Except as provided in section 3 or as otherwise provided by law, a person, or an employee or agent of the person, engaged in the business of selling at retail, renting, or lending books or other written materials, sound recordings, or video recordings shall not disclose to any person, other than the customer, a record or information concerning the purchase, lease, rental, or borrowing of those materials by a customer that indicates the identity of the customer.

History: 1988, Act 378, Eff. Mar. 30, 1989.

Popular name: Video Rental Privacy Act

445.1713 Exceptions.

Sec. 3. A record or information described in section 2 may be disclosed only in 1 or more of the following circumstances:

(a) With the written permission of the customer.

(b) Pursuant to a court order.

(c) To the extent reasonably necessary to collect payment for the materials or the rental of the materials, if the customer has received written notice that the payment is due and has failed to pay or arrange for payment within a reasonable time after notice.

(d) If the disclosure is for the exclusive purpose of marketing goods and services directly to the consumer. The person disclosing the information shall inform the customer by written notice that the customer may remove his or her name at any time by written notice to the person disclosing the information.

(e) Pursuant to a search warrant issued by a state or federal court or grand jury subpoena.

History: 1988, Act 378, Eff. Mar. 30, 1989.

Popular name: Video Rental Privacy Act

445.1714 Violation as misdemeanor.

Sec. 4. A person who violates this act is guilty of a misdemeanor.

History: 1988, Act 378, Eff. Mar. 30, 1989.

Popular name: Video Rental Privacy Act

445.1715 Civil action for damages.

Sec. 5. Regardless of any criminal prosecution for a violation of this act, a person who violates this act shall be liable in a civil action for damages to the customer identified in a record or other information that is disclosed in violation of this act. The customer may bring a civil action against the person and may recover both of the following:

(a) Actual damages, including damages for emotional distress, or $5,000.00, whichever is greater.

(b) Costs and reasonable attorney fees.

History: Add. 1989, Act 206, Imd. Eff. Nov. 7, 1989.

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ROLLER SKATING SAFETY ACT OF 1988
Act 389 of 1988

AN ACT to prescribe the duties and liabilities of roller skating center operators and persons who utilize roller skating centers; and to provide for the acceptance of certain risks by persons who utilize roller skating centers.

History: 1988, Act 389, Eff. Mar. 30, 1989.

The People of the State of Michigan enact:

445.1721 Short title.

Sec. 1. This act shall be known and may be cited as the "roller skating safety act of 1988".

History: 1988, Act 389, Eff. Mar. 30, 1989.

445.1722 Definitions.

Sec. 2. As used in this act:

(a) "Emergency personnel" means police, fire, or other appropriate emergency medical personnel.

(b) "Operator" means a person or entity who owns or controls or who has operational responsibility for a roller skating center.

(c) "Roller skater" means a person wearing roller skates while that person is in a roller skating center for the purpose of roller skating.

(d) "Roller skating center" means a building, facility, or premises which provides an area specifically designed to be used for roller skating by the public.

(e) "Spectator" means a person who is present in a roller skating center only for the purpose of observing skating activity, whether recreational or competitive.

History: 1988, Act 389, Eff. Mar. 30, 1989.

445.1723 Duties of roller skating center operator.

Sec. 3. Each roller skating center operator shall do all of the following:

(a) Post the duties of roller skaters and spectators as prescribed in this act and the duties, obligations, and liabilities of operators as prescribed in this act in conspicuous places.

(b) Comply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980).

(c) Maintain roller skating equipment and roller skating surfaces according to the safety standards cited in subdivision (b).

(d) Maintain the stability and legibility of all required signs, symbols, and posted notices.

History: 1988, Act 389, Eff. Mar. 30, 1989.

445.1724 Duties of roller skater.

Sec. 4. While in a roller skating area, each roller skater shall do all of the following:

(a) Maintain reasonable control of his or her speed and course at all times.

(b) Read all posted signs and warnings.

(c) Maintain a proper lookout to avoid other roller skaters and objects.

(d) Accept the responsibility for knowing the range of his or her own ability to negotiate the intended direction of travel while on roller skates and to skate within the limits of that ability.

(e) Refrain from acting in a manner which may cause injury to others.

History: 1988, Act 389, Eff. Mar. 30, 1989.

445.1725 Acceptance of dangers inherent in roller skating.

Sec. 5. Each person who participates in roller skating accepts the danger that inheres in that activity insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries that result from collisions with other roller skaters or other spectators, injuries that result from falls, and injuries which involve objects or artificial structures properly within the intended travel of the roller skater which are not otherwise attributable to the operator's breach of his or her common law duties.

History: 1988, Act 389, Eff. Mar. 30, 1989.

445.1726 Violation; civil action for damages.

Sec. 6. A roller skater, spectator, or operator who violates this act shall be liable in a civil action for damages for that portion of the loss or damage resulting from the violation.

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History: 1988, Act 389, Eff. Mar. 30, 1989.

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CLEANING, REPAIR, OR STORAGE SERVICES
Act 257 of 1989

AN ACT to regulate the activities of businesses engaged in the cleaning, repair, alteration, or storage of clothing and certain other articles; to provide for the disposition of those articles that are unclaimed; and to repeal certain acts and parts of acts.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

The People of the State of Michigan enact:

445.1751 Definitions.

Sec. 1. As used in this act:

(a) "Article" means any clothing, garment, wearing apparel, leather garment, fur coat or garment, curtain, drapery, rug, carpet, or household furnishing.

(b) "Business" means an individual, partnership, corporation, or other legal entity which, for compensation, provides cleaning or repair services.

(c) "Cleaning or repair services" means 1 or more of the following services in relation to an article:

(*i*) Dry cleaning.

(*ii*) Dyeing.

(*iii*) Pressing.

(*iv*) Laundering.

(*v*) Alterations.

(*vi*) Fabric repair.

(d) "Storage" means the keeping of an article by a business, at the request of the person leaving the article, for a period of time as specified in a receipt or other written document.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1753 Cleaning or repair services; loss of ownership rights.

Sec. 3. Except as provided in section 7, the owner of an article delivered to a business for the purpose of cleaning or repair services shall lose his or her ownership rights to the article not less than 1 year after the date the article was delivered to the business if the article has been in the possession of the business for more than 1 year after the date of delivery to that business.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1755 Storage; loss of ownership rights.

Sec. 5. Except as provided in section 7, the owner of an article delivered to a business for the purpose of storage shall lose his or her ownership rights to the article not less than 1 year after the date on which the storage agreement terminated or expired if the article has been in the possession of that business for more than 1 year after the storage agreement terminated or expired.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1757 Regaining of ownership rights; circumstances.

Sec. 7. The owner of an article may regain his or her ownership rights in an article where the ownership rights were terminated pursuant to section 3, 5, or 9 if both of the following circumstances exist:

(a) The business has not sold, donated, or otherwise disposed of the article.

(b) The person desiring to regain his or her ownership rights pays the amount owing for cleaning or repair services or storage.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1759 Termination of owner's rights to article; circumstances; business as owner of article; disposition of article.

Sec. 9. (1) On or after the effective date of this act, the owner's rights to an article shall immediately terminate if any of the following circumstances exists:

(a) The article was delivered to the business for the purpose of cleaning or repair services and has been in the possession of that business for more than 1 year after the date of delivery to that business.

(b) The article was delivered to the business for the purpose of storage and has been in the possession of that business for more than 1 year after the date the storage agreement terminated or expired.

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(2) Upon the loss of the owner's rights to an article as provided for by this act, the business shall become the owner of the article.

(3) A business may sell, donate, or otherwise dispose of an article upon the loss of the owner's rights to an article.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1761 Display of notices.

Sec. 11. A business shall display in a prominent place in its retail store notices substantially complying with the following:

"ANY CLOTHING, GARMENT, WEARING APPAREL, LEATHER GARMENT, FUR COAT OR GARMENT, CURTAIN, DRAPERY, RUG, CARPET, OR HOUSEHOLD FURNISHING DRY CLEANED, DYED, PRESSED, LAUNDERED, ALTERED, OR REPAIRED WHICH IS NOT PICKED UP WITHIN 1 YEAR AFTER THE DATE IT WAS DELIVERED MAY BE SOLD, DONATED, OR OTHERWISE DISPOSED OF PURSUANT TO ACT NO. _____ OF THE PUBLIC ACTS OF _____."

"ANY CLOTHING, GARMENT, WEARING APPAREL, LEATHER GARMENT, FUR COAT OR GARMENT, CURTAIN, DRAPERY, RUG, CARPET, OR HOUSEHOLD FURNISHING DELIVERED FOR STORAGE WHICH IS NOT PICKED UP WITHIN 1 YEAR AFTER THE DATE THE STORAGE AGREEMENT TERMINATED OR EXPIRED MAY BE SOLD, DONATED, OR OTHERWISE DISPOSED OF PURSUANT TO ACT NO. _____ OF THE PUBLIC ACTS OF _____."

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

445.1763 Repeal of §§ 570.211 to 570.217.

Sec. 13. Act No. 43 of the Public Acts of 1943, being sections 570.211 to 570.217 of the Michigan Compiled Laws, is repealed.

History: 1989, Act 257, Imd. Eff. Dec. 26, 1989.

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FACSIMILE MACHINES
Act 48 of 1990

AN ACT to prohibit the use of a facsimile machine to transmit unsolicited advertising messages; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies and prescribe penalties.

History: 1990, Act 48, Eff. Mar. 28, 1991.

The People of the State of Michigan enact:

445.1771 Definitions.

Sec. 1. As used in this act:

(a) "Advertisement" means a message or material transmitted over a facsimile machine for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of real property, goods, or services.

(b) "Department" means the department of the attorney general.

(c) "Facsimile machine" means a machine which electronically transmits facsimiles of documents through connection with a telephone network.

(d) "Person" means an individual, partnership, association, corporation, or other legal entity.

History: 1990, Act 48, Eff. Mar. 28, 1991.

445.1772 Sending advertisement by facsimile machine; consent.

Sec. 2. (1) A person shall not send an advertisement to another person by means of a facsimile machine without first obtaining, by means other than by a facsimile machine, the consent of the person who will receive the advertisement.

(2) Consent may be given by telephone to a particular vendor or by general notification to marketing or industry trade associations.

(3) Consent to have a facsimile machine telephone number published in a directory or disseminated in any other manner shall not be construed as consent to receive an advertisement under this act.

History: 1990, Act 48, Eff. Mar. 28, 1991.

445.1773 Notice of violation; cease and desist order; opportunity to confer; service.

Sec. 3. (1) If the attorney general has reason to believe that a person has engaged, is engaging, or is about to engage in an act that violates section 2, he or she shall notify the person of the violation and order the person to cease and desist from the act and provide the person the opportunity to confer with the attorney general in person, by counsel, or by other representative.

(2) The notice may be given to the person by mail, postage prepaid, to his or her usual place of business or, if the person does not have a usual place of business, to his or her last known address, or, with respect to a corporation, to the resident agent who is designated to receive service of process or to an officer of the corporation.

(3) A prosecuting attorney or law enforcement officer having reason to believe an alleged violation of this act has occurred shall immediately forward written notice of the alleged violation, together with any information he or she may have, to the attorney general.

History: 1990, Act 48, Eff. Mar. 28, 1991.

445.1774 Assurance of discontinuance.

Sec. 4. (1) The attorney general may accept an assurance of discontinuance of an act which is a violation under section 2 from the person who has engaged, is engaging, or is about to engage in the act.

(2) Except for an action commenced pursuant to section 5, the assurance shall not constitute an admission nor be introduced in any other proceeding.

(3) An assurance of discontinuance shall be in writing and filed with the department. The department shall maintain a record of all filings.

(4) The terms of the assurance of discontinuance may be enforced in an action commenced pursuant to section 5.

History: 1990, Act 48, Eff. Mar. 28, 1991.

445.1775 Injunction, order, decree, or judgment; civil fine; jurisdiction.

Sec. 5. (1) If the attorney general has probable cause to believe a person has continued to violate this act after notice has been provided under section 3 or that the person has violated an assurance of discontinuance entered under section 4, the attorney general may bring an action to restrain the person by temporary or

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permanent injunction from engaging in the act or to enforce the terms of the assurance of discontinuance. The action may be brought in the circuit court of the county where the person is established or conducts business or in the circuit court of Ingham county.

(2) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued pursuant to this section or the terms of an assurance of discontinuance under section 4 shall forfeit and pay to the state a civil fine of not more than $500.00 for each violation.

(3) For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction and the attorney general may petition the court for recovery of the civil fine as provided by this section.

History: 1990, Act 48, Eff. Mar. 28, 1991.

445.1776 Civil suit.

Sec. 6. A person who receives an advertisement in violation of this act may file a civil suit in the court of proper jurisdiction to recover actual damages or $500.00, whichever is greater, plus reasonable attorney fees, if any of the following occurred before the person received the advertisement:

(a) The attorney general issued a notice to cease and desist under section 3 to the person who sent the advertisement.

(b) The person who sent the advertisement entered into an assurance of discontinuance under section 4.

(c) The person notified the sender in writing that the sender did not have the person's consent to send an advertisement.

History: 1990, Act 48, Eff. Mar. 28, 1991;—Am. 1998, Act 93, Eff. Mar. 23, 1999.

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MOTOR FUEL DISTRIBUTION ACT
Act 134 of 1990

AN ACT to regulate the termination and transfer of motor fuel franchises; and to provide for certain remedies.

History: 1990, Act 134, Imd. Eff. June 26, 1990.

The People of the State of Michigan enact:

445.1801 Short title.

Sec. 1. This act shall be known and may be cited as the "motor fuel distribution act".

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1802 Definitions.

Sec. 2. As used in this act:

(a) "Contract" means any oral or written agreement.

(b) "Franchise" means a contract between a refiner and a retailer or between a distributor and a retailer, under which a refiner or distributor authorizes or permits a retailer to use, in connection with the sale, consignment, or distribution of gasoline, diesel, gasohol, or aviation fuel, a trademark that is owned or controlled by a refiner, or by a refiner that supplies fuel to the distributor that authorizes or permits such use. Franchise includes, but is not limited to, both of the following:

(*i*) A contract under which a retailer is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of fuel under a trademark that is owned or controlled by a refiner.

(*ii*) A contract pertaining to the supply of fuel that is to be sold, consigned, or distributed by a retailer under a trademark owned or controlled by a refiner.

(c) "Distributor" means a person, including any affiliate of the person, who meets either of the following requirements:

(*i*) Purchases motor fuel for sale, consignment, or distribution to another.

(*ii*) Receives motor fuel on consignment for consignment or distribution to his or her own motor fuel accounts or to accounts of his or her supplier, but does not include a person who is an employee of, or merely serves as a common carrier providing transportation service for the supplier.

(d) "Franchisee" means a retailer who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of fuel. Franchisee does not include a distributor which resells motor fuel to retailers, to the general public, or to both retailers and the general public.

(e) "Franchisor" means a refiner or distributor who authorizes or permits, under a franchise, a retailer to use a trademark in connection with the sale, consignment, or distribution of fuel.

(f) "Marketing premises" means, in the case of any franchise, premises that, under the franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of motor fuel.

(g) "Motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(h) "Refiner" means a person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of the person.

(i) "Retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1803 Death of franchisee; devolution of franchise and lease or other agreement to designated successor or secondary designee; standards; limitation; notice; applicability of section.

Sec. 3. (1) Following the death of a franchisee, who is not a trial franchise retailer, the franchise and any lease or other agreement in connection with the franchise shall devolve to the designated successor or secondary designee of the franchisee if prior to the franchisee's death the franchisee notified the franchisor in writing of the name, address, and relationship of the designated successor and secondary designee. The designated successor and secondary designee shall meet the reasonable standards normally required by the franchisor of a prospective franchisee at the time of the franchisee's death.

(2) The franchise shall devolve to the secondary designee in the event the designated successor is unable to operate the franchise.

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(3) The designated successor and secondary designee shall be limited to, unless otherwise agreed to by the parties, the franchisee's surviving spouse, adult child, stepchild, son-in-law, or daughter-in-law. The designated successor or secondary designee shall not be a previously terminated or nonrenewed retailer of the franchisor.

(4) Within 30 days of the death of the franchisee, the designated successor or secondary designee shall give written notice to the franchisor of his or her election to assume and to operate the franchise, and shall promptly provide any information reasonably requested by the franchisor. If the designated successor or secondary designee fails to give the notice, the franchisor gives the designated successor or secondary designee written notice, specifying the reasons, that the designated successor or secondary designee fails to meet at least 1 of the reasonable standards normally required by the franchisor of a prospective franchisee, or the franchise has not been operated in accordance with the terms and conditions contained in the franchise by the franchisee, then the designated successor or secondary designee shall have no further rights or obligations under the franchise.

(5) This section shall not apply to a franchise where a mutual termination has been executed or an outstanding notice of termination or nonrenewal has been given by the franchisor prior to the death of the franchisee.

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1804 Franchise and lease or other agreement; transfer or assignment; consent; standards; notice of intent; objection; approval; compliance; assumption of obligations; effect of termination or nonrenewal of franchise; option of franchisor to purchase; exception.

Sec. 4. (1) A franchise agreement and any other lease or agreement in connection with the franchise agreement between a franchisor and a franchisee shall be transferable or assignable if the franchisor consents to the assignment. The franchisor's consent shall not be unreasonably withheld. A proposed assignee shall meet the standards normally required by the franchisor of a prospective franchisee.

(2) Prior to any transfer or assignment by the franchisee, the franchisee shall provide written notice to the franchisor of an intention to transfer or assign setting forth the prospective assignee's name, address, statement of financial qualification and business experience during the previous 5 years, and such further information as the franchisor shall reasonably request.

(3) The franchisor, within 60 days after receipt of the notice of intent and all requested information, shall advise the franchisee of its consent or objection to the transfer or assignment.

(4) If the franchisor objects to the transfer or assignment, it shall state its reasons in writing to the franchisee. If the franchisor does not reply within 60 days, approval of the transfer or assignment shall be considered granted.

(5) The transfer or assignment shall not be valid until the assignee agrees in writing to comply with all the requirements of the franchise and any other lease or agreement in connection with the franchise then in ef fect and assumes all obligations of the franchisee.

(6) A franchisee may not exercise the right of assignment or transfer after he or she has been notified of termination or nonrenewal of the franchise for a cause permitted in the petroleum marketing practices act, Public Law 95-297, 15 U.S.C. 2801 to 2806 and 2821 to 2841.

(7) A franchisee shall not sell, convey, or otherwise dispose of the franchisee's interest in a lease, any franchise relationship attendant to a lease, or the franchisee's business as related to a lease without first giving the franchisor an option to purchase or otherwise acquire the interest on the same terms and conditions as set forth in any contract entered into and fully executed by the franchisee in a bona fide transaction, except for a sale or transfer from the franchisee to the franchisee's spouse, adult child, stepchild, son-in-law, or daughter-in-law.

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1805 Closing during holiday.

Sec. 5. (1) The franchisor shall not prohibit a franchisee from closing during 1 recognized holiday per calendar year as determined by the franchisee.

(2) The franchisee shall provide the franchisor with not less than 60 days' notice of any closing due to a holiday.

(3) The period of closing under this section shall be limited to the 36-hour period of 6 p.m. the day before the holiday to 6 a.m. the day after the holiday.

(4) This section does not apply to marketing premises used by the franchisee that are located within 1/2 mile of an interstate highway exit or U.S. route.

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History: 1990, Act 134, Eff. Dec. 1, 1991.

445.1806 Violation of act resulting in injury; action for injunctive relief or damages; jurisdiction; fees and costs.

Sec. 6. A person injured in the person's business or property by reason of a violation of this act may bring an action in the court having jurisdiction in the county where the defendant resides or is found, where the agent of the defendant resides or is found, or where service may be obtained, for injunctive relief or to recover the damages sustained by the person, or both, and shall be awarded reasonable attorney fees and costs of the action.

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1807 Applicability of act.

Sec. 7. This act shall not apply to any distributor who is not authorized to distribute motor fuels under a trademark owned or controlled by a refiner.

History: 1990, Act 134, Eff. Oct. 1, 1990.

445.1808 Effective date of §§ 445.1801, 445.1802, 445.1803, 445.1804, 445.1806, 445.1807; effective date of § 445.1805.

Sec. 8. (1) Sections 1, 2, 3, 4, 6, and 7 shall take effect October 1, 1990.

(2) Section 5 shall take effect December 1, 1991.

History: 1990, Act 134, Imd. Eff. June 26, 1990.

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CREDIT SERVICES PROTECTION ACT
Act 160 of 1994

AN ACT to prohibit certain methods, acts, and practices of credit services organizations; to prescribe remedies and penalties; and to repeal certain acts and parts of acts.

History: 1994, Act 160, Imd. Eff. June 13, 1994.

The People of the State of Michigan enact:

445.1821 Short title.

Sec. 1. This act shall be known and may be cited as the "credit services protection act".

History: 1994, Act 160, Imd. Eff. June 13, 1994.

445.1822 Definitions.

Sec. 2. As used in this act:

(a) "Buyer" means a person who is solicited to purchase or who purchases the services of a credit services organization.

(b) "Credit services organization" means, except as otherwise provided in subdivision (c), a person who, in return for consideration, attempts to sell, provide, or perform 1 or more of the following:

(*i*) The improvement of a person's credit record, history, or rating.

(*ii*) The obtainment of an extension of credit.

(*iii*) Advice or assistance regarding the improvement or repair of a person's credit record, history, or rating.

(*iv*) Advice or assistance regarding the obtainment of an extension of credit.

(*v*) Advice or assistance regarding foreclosure of a real estate mortgage.

(*vi*) Serve as an intermediate between a debtor and a creditor on behalf of the debtor regarding credit that was extended prior to any agreement to have the credit services organization serve as an intermediate.

(c) Credit services organization does not include any of the following:

(*i*) A person who is licensed in this state or otherwise authorized to make loans or extend credit under any state statute while engaged in the regular course of business under that state statute, other than Act No. 326 of the Public Acts of 1966, being sections 438.31 to 438.33 of the Michigan Compiled Laws.

(*ii*) A federal or state chartered bank, credit union, savings bank, or savings and loan institution, an entity of the federally chartered farm credit system, or any solely owned subsidiary thereof.

(*iii*) A person licensed under the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.101 to 339.2721 of the Michigan Compiled Laws, when engaged in the regular course of business.

(*iv*) A person licensed to practice law in this state if the person renders services within the course of that person's practice as an attorney and does not engage in the business of a credit services organization on a regular and continuing basis.

(*v*) A judicial officer or other person acting under court order.

(*vi*) A consumer reporting agency, as defined in section 603 of the fair credit reporting act, title VI of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1681a, while engaged in the regular course of the credit reporting business.

(*vii*) A debt management business licensed under the debt management act, Act No. 148 of the Public Acts of 1975, being sections 451.411 to 451.437 of the Michigan Compiled Laws, while engaged in the regular course of business under the debt management act.

(*viii*) An investment adviser or broker-dealer registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(*ix*) A nonprofit corporation that is exempt from taxation under section 501c(3) of the United States internal revenue code, title 26 U.S.C. 501c(3).

(*x*) A finance subsidiary of a manufacturing corporation.

(d) "Extension of credit" means the right to defer payment of debt or to incur debt.

(e) "Person" means an individual, partnership, corporation, association, or other legal entity.

History: 1994, Act 160, Imd. Eff. June 13, 1994.

445.1823 Prohibited conduct.

Sec. 3. A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not do any of the following:

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(a) Charge or receive from a buyer who is seeking a loan or extension of credit any money or other valuable consideration before the closing of the loan or extension of credit.

(b) Charge a buyer or receive from a buyer of services money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer.

(c) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral to a retail seller who will or may extend credit to the buyer if the credit that is or may be extended to the buyer is substantially the same as that available to the general public.

(d) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization.

(e) Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization including, but not limited to, both of the following:

(*i*) Guaranteeing or otherwise stating that the organization is able to delete an adverse credit history unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, that this can be done only if the credit history is inaccurate or obsolete and is not claimed to be accurate by the creditor who submitted the information.

(*ii*) Guaranteeing or otherwise stating that the organization is able to obtain an extension of credit regardless of the buyer's previous credit problems or credit history unless the representation clearly discloses, in a manner equally as conspicuous as the guarantee, the eligibility requirements for obtaining an extension of credit.

(f) Fail to perform the agreed services within 90 days following the date the buyer signs the contract for services.

(g) Counsel or advise a buyer to make a statement that is known, or should be known, to be untrue or misleading to a consumer credit reporting agency, a person who has extended credit to a buyer, or to a person to whom the buyer is applying for an extension of credit.

(h) Remove, assist, or advise the buyer to remove adverse information from the buyer's credit record which is accurate and not obsolete.

(i) Create, assist, or advise the buyer to create a new credit record by using a different name, address, social security number, or employer identification number.

(j) Submit a buyer's dispute to a consumer credit reporting agency without the buyer's knowledge.

(k) Provide a service to a buyer that is not pursuant to a written contract that complies with this section.

History: 1994, Act 160, Imd. Eff. June 13, 1994.

445.1824 Actions by attorney general, county prosecutor, or buyer; limitation; other legal remedies not limited or prohibited.

Sec. 4. (1) Except as provided in subsection (2), the attorney general, a county prosecutor, or a buyer may bring an action to do 1 or more of the following:

(a) Enjoin a person who is engaged or is about to engage in a method, act, or practice that violates this act.

(b) Obtain a declaratory judgment that a method, act, or practice violates this act.

(c) Recover actual damages consisting of an amount not less than the amount paid by the buyer to the credit services organization, plus reasonable attorney fees and court costs. The court may also award the buyer any punitive damages that it considers proper.

(2) A person shall not bring an action under this act more than 4 years after the date of execution of the contract for services to which the action relates.

(3) In an action under this act, the burden of proving an exemption under section 2(c) is on the person claiming the exemption.

(4) This act does not limit or prohibit any other legal remedy available to the attorney general, a county prosecutor, or a buyer.

History: 1994, Act 160, Imd. Eff. June 13, 1994.

445.1825 Violation as misdemeanor; penalty; separate offense; recovery of fees or other charges.

Sec. 5. (1) A person who violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00, or both. Each transaction in violation of this act constitutes a separate offense.

(2) A credit services organization that violates this act is barred from recovering any fees or other charges from a buyer.

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History: 1994, Act 160, Imd. Eff. June 13, 1994.

445.1826 Repeal of §§ 445.1701 to 445.1708.

Sec. 6. Act No. 361 of the Public Acts of 1988, being sections 445.1701 to 445.1708 of the Michigan Compiled Laws, is repealed.

History: 1994, Act 160, Imd. Eff. June 13, 1994.

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CREDIT REFORM ACT
Act 162 of 1995

AN ACT to allow certain regulated lenders to charge interest for extensions of credit; to prescribe the powers and duties of certain state agencies and officials; to provide for remedies; and to prescribe penalties.

History: 1995, Act 162, Eff. Mar. 28, 1996.

The People of the State of Michigan enact:

445.1851 Short title.

Sec. 1. This act shall be known and may be cited as the "credit reform act".

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1852 Definitions.

Sec. 2. As used in this act:

(a) "Borrower" means a person who obtains an extension of credit from a regulated lender.

(b) "Commissioner" means the commissioner of the financial institutions bureau of the department of consumer and industry services.

(c) "Credit card arrangement" means an extension of credit that is not secured by real property made to a cardholder of a credit card or charge card issued by a regulated lender under an arrangement that gives to a cardholder the privilege of obtaining credit from the regulated lender or any other person in purchasing or leasing property or services, obtaining credit or loans, or otherwise.

(d) "Credit sale" means an extension of credit for the sale of goods or services by a seller that is subject to the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws, or the motor vehicle sales finance act, Act No. 27 of the Public Acts of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws.

(e) "Depository institution" means a bank, savings and loan association, savings bank, or a credit union chartered under state or federal law which maintains a principal office or branch in this state.

(f) "Excessive fee or charge" means a fee or charge that exceeds the amount allowed in section 6(1), (2), or (3), section 7, or any other applicable law or statute of this state.

(g) "Extension of credit" means a loan or credit sale made by a regulated lender. An extension of credit does not include an extension of credit described in section 501(a)(1) of title V of the depository institutions deregulation and monetary control act of 1980, Public Law 96-221, 12 U.S.C. 1735f-7 nt.

(h) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(i) "Regulated lender" means a depository institution, a licensee under the consumer financial services act, Act No. 161 of the Public Acts of 1988, being sections 487.2051 to 487.2072 of the Michigan Compiled Laws, Act No. 379 of the Public Acts of 1984, being sections 493.101 to 493.114 of the Michigan Compiled Laws, the motor vehicle sales finance act, Act No. 27 of the Public Acts of the Extra Session of 1950, Act No. 125 of the Public Acts of 1981, being sections 493.51 to 493.81 of the Michigan Compiled Laws, or the regulatory loan act of 1963, Act No. 21 of the Public Acts of 1939, being sections 493.1 to 493.26 of the Michigan Compiled Laws, or a seller under the home improvement finance act, Act No. 332 of the Public Acts of 1965.

History: 1995, Act 162, Eff. Mar. 28, 1996;—Am. 1996, Act 85, Eff. Mar. 28, 1996;—Am. 1996, Act 419, Imd. Eff. Nov. 22, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1853 Scope of act.

Sec. 3. This act does not authorize a regulated lender to make an extension of credit of a type that is not permitted by the act under which the regulated lender is chartered, organized, licensed, regulated, or otherwise authorized to extend credit.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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445.1854 Charge, collection, and receipt of interest rate or finance charge; maximum rate; computation.

Sec. 4. (1) Except as provided in subsection (2), a regulated lender may charge, collect, and receive any rate of interest or finance charge for an extension of credit not to exceed 25% per annum.

(2) A depository institution may charge, collect, and receive any rate of interest or finance charge for a credit card arrangement.

(3) Except for a fee or charge provided for in section 6 or 7, in connection with an extension of credit made to an individual for personal, family, or household purposes, the interest or finance charge that is calculated on the principal balance shall be computed only on the basis of the unpaid balance.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1855 Credit sale under §§ 445.1101 to 445.1431 or §§ 492.101 to 492.141; written agreement; precomputed interest provision.

Sec. 5. The written agreement made in connection with a credit sale under the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws, or the motor vehicle sales finance act, Act No. 27 of the Public Acts of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws, may provide for precomputed interest or its equivalent if any rebate due at prepayment in full is computed according to the actuarial method.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1856 Regulated lender; authority to charge fee for late payment or dishonored check; fee or charge not considered as interest; excessive fee or charge.

Sec. 6. (1) Except for depository institutions and as otherwise provided by law, a regulated lender may do any of the following:

(a) Require the borrower to pay a processing fee in connection with making, closing, disbursing, extending, readjusting, or renewing an extension of credit. The processing fee allowed under this subdivision shall not exceed 2% of the amount of the extension of credit.

(b) Charge the borrower a late fee for an installment payment that is received by the regulated lender after the expiration of an agreed-upon grace period following the date on which the payment was due.

(c) A late fee allowed by this subdivision shall not exceed $15.00 or 5% of the installment payment, whichever is greater.

(2) A regulated lender may charge a fee not to exceed $25.00 for a check or other payment instrument that is dishonored because of insufficient funds in the account on which the check or instrument is drawn.

(3) A fee or charge allowed by this section is not considered interest.

(4) A regulated lender shall not require a borrower or buyer to pay an excessive fee or charge.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1857 Fees or charges servicing extension of credit; charge, collection, and receipt by depository institution; credit card arrangement fees and charges considered as interest; excessive fee or charge.

Sec. 7. (1) In addition to the interest or finance charges that are authorized under section 4, a depository institution may charge, collect, and receive from a borrower or buyer all fees and charges that are agreed to or accepted by the borrower or buyer including those relating to making, closing, processing, disbursing, extending, committing to extend, readjusting, renewing, collecting payments upon, or otherwise servicing an extension of credit or any occurrence or transaction related to an extension of credit.

(2) For any credit card arrangement, all fees and charges allowed by this section are considered interest.

(3) A depository institution shall not require a borrower or buyer to pay an excessive fee or charge.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of

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financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1858 Certain provisions in written agreement as void and unenforceable.

Sec. 8. Any of the following provisions contained in a written document made in connection with an extension of credit to an individual for personal, family, or household purposes are void and unenforceable:

(a) A power of attorney to confess a judgment.

(b) Unless otherwise expressly provided for by law, a waiver of a borrower's or buyer's rights under this act.

(c) Except as authorized by this act, an agreement by a borrower or buyer to pay a penalty. Late payment and prepayment charges are not penalties.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1859 Additional financial services as condition for loan approval prohibited; offer of services; certain transactions or requirements not prohibited; applicability of section to depository institution subject to 12 U.S.C. 1972; definitions.

Sec. 9. (1) A regulated lender shall not require as a condition of approving a loan that the borrower contract for 1 or more additional financial services offered by the regulated lender or a particular service provider designated by the regulated lender.

(2) This section does not preclude a regulated lender from offering a combination of 2 or more services under prices or terms that are more favorable to the borrower than the prices or terms the services would be offered separately.

(3) This section does not prohibit a transaction or requirement that is not prohibited by federal law.

(4) This section does not apply to a requirement by a depository institution subject to 12 U.S.C. 1972 or by an affiliate of 1 or more of such depository institutions.

(5) As used in this section:

(a) “Affiliate” means a person that controls, is controlled by, or is under common control with 1 or more depository institutions.

(b) “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1860 Written complaint alleging violation of act; duty of commissioner.

Sec. 10. Upon receipt of a written complaint alleging a violation of this act by a regulated lender, the commissioner shall do 1 of the following:

(a) Investigate the complaint if the regulated lender is chartered, licensed, or regulated by the commissioner.

(b) If the regulated lender is not subject to the jurisdiction of the commissioner, forward the complaint to the appropriate regulatory or investigatory authority.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1861 Action by attorney general, prosecuting attorney, or borrower; recovery of interest or other charges; attorney fees and court costs; class action.

Sec. 11. (1) The attorney general, the prosecuting attorney for the county where an alleged violation occurred, or a borrower may bring an action against a regulated lender to do 1 or more of the following:

(a) Obtain a declaratory judgment that a method, act, or practice of a regulated lender is a violation of this act.

(b) Enjoin a regulated lender who is engaging or about to engage in a method, act, or practice that is a violation of this act.

(c) Recover $1,000.00 and actual damages if the alleged violation of this act was committed by a regulated lender for a non-credit card arrangement or $1,500.00 and actual damages if the alleged violation involved

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any other credit arrangements.

(d) Recover reasonable attorney fees and the costs in connection with bringing an action under this act if the regulated lender is found to have violated this act.

(e) In an action brought by the attorney general or a county prosecutor, recover a civil fine of not more than $10,000.00 if the regulated lender is found to have willfully and knowingly violated this act and $20,000.00 if the regulated lender is found to have persistently violated this act.

(2) Except for a violation described in section 12, a regulated lender who violates this act in the extension of credit to a borrower or buyer shall not recover any interest or other charges in connection with the extension of credit. The borrower or buyer may recover reasonable attorney fees and court costs for enforcing this subsection or in defending against a cause of action brought by a regulated lender who has violated this act.

(3) The attorney general or a borrower may bring a class action on behalf of persons injured by a violation of this act.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1862 Violation of act; exceptions.

Sec. 12. (1) A regulated lender is not liable for a violation of this act if the regulated lender has fully complied with the federal truth-in-lending act, Public Law 90-321, 15 U.S.C. 1601 to 1667e and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error.

(2) A regulated lender is not liable for a violation of this act if, within 60 days after discovering the violation and before the institution of an action under section 11, the regulated lender notifies the borrower or buyer of the violation and corrects the violation in a manner that, to the extent it is reasonably possible to do so, restores the borrower or buyer to the position in which the borrower or buyer would have been if the violation had not occurred.

(3) The burden of proving that a violation was an unintentional and bona fide error is on the regulated lender.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1863 Enforcement of other laws not limited.

Sec. 13. This act does not limit the authority of the commissioner, the attorney general, or a county prosecutor to enforce any law under which a regulated lender is chartered, organized, licensed, regulated, or otherwise authorized to extend credit.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

445.1864 Validity of transactions, rates of interest, fees, or charges.

Sec. 14. This act does not impair the validity of a transaction, rate of interest, fee, or charge that is otherwise lawful.

History: 1995, Act 162, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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UNIFORM TRADE SECRETS ACT
Act 448 of 1998

AN ACT to protect certain trade secrets; to prohibit disclosure of trade secrets; to provide for remedies; and to repeal acts and parts of acts.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

The People of the State of Michigan enact:

445.1901 Short title.

Sec. 1. This act shall be known and may be cited as the "uniform trade secrets act".

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1902 Definitions.

Sec. 2. As used in this act:

(a) "Improper means" includes theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or any other means.

(b) "Misappropriation" means either of the following:

(*i*) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.

(*ii*) Disclosure or use of a trade secret of another without express or implied consent by a person who did 1 or more of the following:

(A) Used improper means to acquire knowledge of the trade secret.

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it, acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person to maintain its secrecy or limit its use.

(C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(c) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

(*i*) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(*ii*) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1903 Misappropriation; injunction.

Sec. 3. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court of competent jurisdiction, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If a court determines that it would be unreasonable to prohibit future use of a trade secret, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1904 Misappropriation; recovery of damages.

Sec. 4. Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or

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use of a trade secret.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1905 Award of attorney's fees.

Sec. 5. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1906 Trade secret; preservation of secrecy.

Sec. 6. In an action under this act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1907 Statute of limitations; continuing misappropriation as single claim.

Sec. 7. An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1908 Other laws and remedies; effect.

Sec. 8. (1) Except as provided in subsection (2), this act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This act does not affect any of the following:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret.

(b) Other civil remedies that are not based upon misappropriation of a trade secret.

(c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1909 Applicability and construction of act.

Sec. 9. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

445.1910 Effective date.

Sec. 10. This act takes effect October 1, 1998 and does not apply to misappropriation occurring before the effective date. With respect to a continuing misappropriation that began before the effective date, this act does not apply to the continuing misappropriation that occurs after the effective date.

History: 1998, Act 448, Imd. Eff. Dec. 30, 1998.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2006-2

445.1981 Transfer of certain authority, powers, duties, functions, and responsibilities of the department of environmental quality under the mobile home commission act to the department of labor and economic growth by a type II transfer; exceptions.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, many of the functions related to the regulation of mobile home parks and seasonal mobile home parks currently performed by the Department of Environmental Quality can more efficiently and effectively be performed by the Department of Labor and Economic Growth;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law order:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

C. "State Budget Director" means the Director of the State Budget Office created under Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

D. "Type II Transfer" means that type of transfer as defined in Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(b).

II. TRANSFER OF AUTHORITY

A. Except as provided in Section II.B, all of the following authority, powers, duties, functions, and responsibilities of the Department of Environmental Quality under The Mobile Home Commission Act, 1987 PA 96, MCL 125.2301 to 125.2350, previously transferred from the Department of Public Health to the Department of Environmental Quality under Executive Order 1996-1, MCL 330.3101, are transferred by Type II Transfer from the Department of Environmental Quality to the Department of Labor and Economic Growth:

1. Promulgating rules and setting forth minimum standards regulating all of the following under Subdivisions 1(c) to 1(g) of Section 6 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2306:

a. Drainage.

b. Garbage and rubbish storage and disposal.

c. Insect and rodent control.

d. General operation, maintenance, and safety.

e. Certification of compliance.

2. Coordinating approvals by state and local governments of preliminary plans to develop a mobile home park or a seasonal mobile home park under Section 11 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2311.

3. Conducting annual physical inspections of mobile home parks and seasonal mobile home parks and granting certificates of compliance under Section 17 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2317, in accordance with standards established by the Department regulating all of the following under Subdivisions 1(c) to 1(g) of Section 6 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2306:

a. Drainage.

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b. Garbage and rubbish storage and disposal.
c. Insect and rodent control.
d. General operation, maintenance, and safety.
e. Certification of compliance.

4. All other authority, powers, duties, functions, and responsibilities vested in the Department of Environmental Quality under The Mobile Home Commission Act, 1987 PA 96, MCL 125.2301 to 125.2350, previously transferred from the Department of Public Health to the Department of Environmental Quality under Executive Order 1996-1, except as provided under Section II.B of this Order.

B. All of the following authority, powers, duties, functions, and responsibilities are retained by the Department of Environmental Quality and are not transferred to the Department of Labor and Economic Growth:

1. Promulgating rules and setting forth minimum standards regulating all of the following under Subdivisions 1(a) to 1(b) of Section 6 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2306:

a. Water supply systems.
b. Sewage collection and disposal systems.

2. Conducting annual physical inspections of mobile home parks and seasonal mobile home parks and granting certificates of compliance under Section 17 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2317, in accordance with standards established by the Department regulating all of the following under Subdivisions 1(a) to 1(b) of Section 6 of The Mobile Home Commission Act, 1987 PA 96, MCL 125.2306:

a. Water supply systems.
b. Sewage collection and disposal systems.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Labor and Economic Growth in such ways as to promote efficient administration.

C. All rule-making, licensing, and registration functions related to the functions transferred under this Order, including, but not limited to, the prescription of rules, regulations, standards, and adjudications, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, are transferred to the Director of the Department of Labor and Economic Growth.

D. The Director of the Department of Labor and Economic Growth may delegate within the Department of Labor and Economic Growth a duty or power conferred on the Director of the Department of Labor and Economic Growth by this Order or by other law or order, and the individual to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the power is delegated by the Director of the Department of Labor and Economic Growth.

E. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Department of Environmental Quality for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Labor and Economic Growth.

F. No personnel shall be transferred under this Order.

G. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for Fiscal Year 2006-2007.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

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History: 2006, E.R.O. No. 2006-16, Eff. Oct. 1, 2006.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2002-6

445.1991 Renaming division on deafness to division on deaf and hard of hearing; renaming advisory council on deafness to advisory council on deaf and hard of hearing.

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Act No. 72 of the Public Acts of 1937, as amended, being Section 408.201 et seq. of the Michigan Compiled Laws, created the Division on Deafness and the Advisory Council on Deafness within the Department of Labor; and

WHEREAS, Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws, transferred the Division on Deafness and the Advisory Council on Deafness from the Department of Labor to the Family Independence Agency; and

WHEREAS, the current names of the Division on Deafness and the Advisory Council on Deafness do not accurately describe the entire population served by those entities; and

WHEREAS, it is necessary in the interests of efficient administration and the effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

The Division on Deafness is hereby renamed the Division on Deaf and Hard of Hearing.

The Advisory Council on Deafness is hereby renamed the Advisory Council on Deaf and Hard of Hearing.

History: 2002, E.R.O. No. 2002-6, Eff. July 8, 2002.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1996-2

445.2001 Renaming of department of commerce as department of consumer and industry services; transfer of powers and duties of various boards, commissions, and other agencies; abolishment of the department of labor.

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, the functions of licensing, permitting and registration of professions and occupations have historically been housed in various state departments and agencies; and

WHEREAS, reorganizing licensing, permitting and registration functions into one principal department will ensure the most efficient use of taxpayer dollars and will allow the state to offer more streamlined services; and

WHEREAS, it is desirable to continue the process begun in Executive Orders 1991-9 and 1996-1 of centralizing the functions of licensing, permitting and registration of professions and occupations to the greatest extent possible; and

WHEREAS, there is a continued need to reorganize functions amongst state departments to ensure efficient administration; and

WHEREAS, it is necessary in the interest of efficient administration and effectiveness in government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

1. The Michigan Department of Commerce is hereby renamed the Michigan Department of Consumer and Industry Services.

2. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of all transfers of authority to the Department of Consumer and Industry Services made under this Order.

3. The Director of the Department of Consumer and Industry Services shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Department of Consumer and Industry Services and the directors of all other state departments and agencies having authority transferred to the Department of Consumer and Industry Services under this Order shall immediately initiate coordination to facilitate the transfer and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved related to the authority to be transferred.

5. Consistent with Section 3(a) of Act No. 380 of Public Acts of 1965, as amended, being Section 16.103(a) of the Michigan Compiled Laws, the administration, budgeting, procurement and related management functions of each Type I agency transferred to, or which is otherwise within the Department of Consumer and Industry Services, shall be under the supervision of the Director of the Department of Consumer and Industry Services, with each Type I agency only executing its prescribed statutory functions of rule-making, licensing and registration including the prescription of rules, rates, regulation and standards, and adjudication independently of the Director.

6. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to any entity for the activities, powers, duties, functions and responsibilities transferred to the Department of Consumer and Industry Services by this Order are hereby transferred to the Department of Consumer and Industry Services.

7. The Director of the Department of Consumer and Industry Services may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated

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may perform such duty or exercise such power at the time and to the extent that such duty or power is delegated by the Director of the Department of Consumer and Industry Services.

8. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

9. All rules, orders, contracts and agreements relating to the functions transferred to the Department of Consumer and Industry Services by this Order lawfully adopted prior to the effective date of this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

10. Any suit, action or other proceeding lawfully commenced by, against or before any entity transferred to the Department of Consumer and Industry Services by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

II. DEPARTMENT OF COMMERCE

1. All the statutory authority, powers, duties, functions and responsibilities of the Corporation and Securities Commission created by Act No. 265 of the Public Acts of 1964, as amended, being Sections 451.1 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All the statutory authority, powers, duties, functions and responsibilities of the Corporation and Securities Bureau under the Uniform Securities Act, Act No. 265 of the Public Acts of 1964, as amended, being Sections 451.501 et seq. of the Michigan Compiled Laws; the Debt Management Act, Act No. 148 of the Public Acts of 1975, as amended, being Sections 451.411 et seq. of the Michigan Compiled Laws; and the Living Care Disclosure Act, Act No. 440 of the Public Acts of 1976, as amended, being Sections 554.801 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All the statutory authority, functions, duties and responsibilities of the Mobile Home Commission created under The Mobile Home Commission Act, Act No. 96 of the Public Acts of 1987, as amended, being Sections 125.2301 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. All the statutory authority, powers, duties, functions, and responsibilities of the State Survey and Remonumentation Commission created by the State Survey and Remonumentation Act, Act No. 345 of the Public Acts of 1990, as amended, being Sections 54.261 et seq. of the Michigan Compiled Laws, with the exception of the authority, powers, duties, functions and responsibilities of the Executive Director of the Survey and Remonumentation Commission, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws; all the statutory authority, powers, duties, functions and responsibilities of the Executive Director of the Survey and Remonumentation Commission are transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the position is hereby abolished.

5. All the statutory authority, powers, duties, functions and responsibilities of the State Boundary Commission created by Act No. 191 of the Public Acts of 1968, as amended, being Sections 123.1001 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

6. Except as provided elsewhere in this Order, all the rule-making authority of the occupational and health occupation boards and related task forces created under the Occupational Code, Act No. 299 of the Public Acts of 1980, as amended, being Sections 339.101 et seq. of the Michigan Compiled Laws, and parts 161 through 188 of the Public Health Code, Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.16101 of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled

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Laws.

7. All the statutory authority, powers, duties, functions and responsibilities under the Michigan Business Incubation Act, Act No. 198 of the Public Acts of 1984, as amended, being Sections 125.1571 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

8. All the statutory authority, powers, functions, duties and responsibilities under the Commercial Redevelopment Act, Act No. 255 of the Public Acts of 1978, as amended, being Sections 207.651 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

9. All the statutory authority, powers, functions, duties and responsibilities in connection with reports filed by municipalities pursuant to Section 23 (4) of the Economic Development Corporations Act, Act No. 338 of the Public Acts of 1974, as amended, being Section 125.1623(4) of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

10. All the statutory authority, powers, functions, duties and responsibilities pertaining to small business economic impact statements under Section 45(5) of the Administrative Procedures Act, Act No. 306 of the Public Acts of 1969, as amended, being Section 24.245(5) of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Office of Regulatory Reform in the Executive Office of the Governor by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

11. All the statutory authority, powers, functions, duties and responsibilities of the Low-Level Radioactive Waste Authority, including, but not limited to, those under the Low-Level Radioactive Waste Authority Act, Act No. 204 of the Public Acts of 1987, as amended, being Sections 333.26201 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Michigan Department of Environmental Quality by a Type I transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

12. The Director of the Department of Consumer and Industry Services, the Office of Regulatory Reform, the Director of the Department of Environmental Quality and the Chief Executive Officer of the Michigan Jobs Commission, shall provide executive direction and supervision of the respective transfers. The assigned functions shall be administered under the direction and supervision of the director of the respective departments and offices to which they are transferred.

13. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the respective department or office.

14. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

15. The Director of the Department of Consumer and Industry Services, the Office of Regulatory Reform, the Director of the Department of Environmental Quality and the Chief Executive Officer of the Michigan Jobs Commission shall immediately initiate coordination to facilitate the transfers and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

16. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

17. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

A. Bureau of Occupational and Professional Regulation

1. All the statutory authority, powers, duties, functions and responsibilities of the Dental Specialty Task Force created under Part 166 of the Public Health Code, being Sections 333.16624 of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

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2. All the statutory authority, powers, duties, functions and responsibilities of the Administrative Committee on Public Accountancy under Section 709 of the Occupational Code, being Section 339.709 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All the statutory authority, powers, duties, functions and responsibilities of the Board of Sanitarians under Part 184 of the Public Health Code, being Sections 333.18401 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. All the statutory authority, powers, duties, functions and responsibilities of the Board of Professional Community Planners under Article 23 of the Occupational Code, being Sections 339.2301 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

5. All the statutory authority, powers, duties, functions and responsibilities of the Board of Foresters under Article 21 of the Occupational Code, being Sections 339.2101 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

6. All the statutory authority, powers, duties, functions and responsibilities of the Board of Hearing Aid Dealers under Article 13 of the Occupational Code, being Sections 339.1301 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Commerce to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

7. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision of the transfers, with the assigned functions being administered under the direction and supervision of the Director of the Department of Consumer and Industry Services.

8. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Department of Consumer and Industry Services.

9. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

10. The Director of the Department of Commerce shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

11. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

12. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

B. Public Service Commission

1. The responsibility for administering federal energy conservation grants under the Institutional Conservation Program and the State Energy Conservation Program are hereby transferred from the Public Service Commission to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All the statutory authority, powers, duties, functions and responsibilities of the Public Service Commission pertaining to solar, wind or water energy conversion device credits pursuant to Act No. 190 of the Public Acts of 1983, as amended, being Section 206.262 of the Michigan Compiled Laws, are hereby transferred from the Public Service Commission to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All the statutory authority, powers, duties, functions and responsibilities of the Public Service Commission pertaining to the certification of energy savings by state departments pursuant to Act No. 122 of

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the Public Acts of 1987, as amended, being Section 18.1254 of the Michigan Compiled Laws, are hereby transferred from the Public Service Commission to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. All the statutory authority, powers, duties, functions and responsibilities of the Public Service Commission pertaining to energy conservation improvement reports submitted pursuant to Public Act Nos. 148, 400, 401, 402, 403 and 404 of the Public Acts of 1984 and Public Act No. 22 of the Public Acts of 1985, being Sections 389.122a, 46.11c, 117.5f, 68.36, 41.75b, 78.24b and 380.1274a of the Michigan Compiled Laws, are hereby transferred from the Public Service Commission to the State Treasurer by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

5. All the statutory authority, powers, duties, functions and responsibilities of the Public Service Commission related to appliances under Act No. 317 of the Public Acts of 1975, as amended, being Sections 429.351 et seq. of the Michigan Compiled Laws, are hereby transferred from the Public Service Commission to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

6. The Director of the Department of Consumer and Industry Services and the State Treasurer shall provide executive direction and supervision for the implementation of the respective transfers. The assigned functions shall be administered as provided in this Order.

7. The Director of the Department of Consumer and Industry Services and the State Treasurer shall make such internal organizational changes as may be administratively necessary to efficiently administer the transferred programs and complete the realignment of responsibilities prescribed by this Order.

8. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Public Service Commission for the transferred functions are hereby transferred to the respective departments or agencies as provided in this Order.

9. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

10. The Director of the Department of Consumer and Industry Services and the State Treasurer shall immediately initiate coordination to facilitate the transfers and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Public Service Commission relating to the transferred functions.

11. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

12. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

III. FAMILY INDEPENDENCE AGENCY

1. All the statutory authority, powers, duties, functions and responsibilities of the Commission for the Blind created by Act No. 260 of the Public Acts of 1978, as amended, being Sections 393.351 et seq of the Michigan Compiled Laws, are hereby transferred from the Department of Labor to the Family Independence Agency by a Type II transfer, as defined by Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

2. All the statutory authority, powers, duties, functions and responsibilities of the Commission on Disability Concerns established in Executive Order 1995-11, including but not limited to the statutory authority, powers, duties, functions, and responsibilities set forth in Act No. 11 of the Public Acts of 1968, as amended, being Sections 395.301 et seq. of the Michigan Compiled Laws, the Deaf Persons' Interpreters Act, Act No. 204 of the Public Acts of 1982, being Sections 393.501 et seq of the Michigan Compiled Laws, and the Division of the Deaf and Deafened and the Advisory Council on Deafness established in Act No. 72 of the Public Acts of 1937, as amended, being Sections 408.201 et seq. of the Michigan Compiled Laws, are hereby transferred from the Department of Labor to the Family Independence Agency by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All the statutory authority, powers, duties, functions and responsibilities related to the inspection of infirmaries and places of detention for juveniles set forth in Section 400.14 (1)(k) of the Michigan Compiled Laws, are hereby transferred from the Family Independence Agency to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public

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Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. The Director of the Family Independence Agency and the Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of all respective transfers of authority under this Section. The functions transferred to the Family Independence Agency and Department of Consumer and Industry Services under this Order shall be administered under the direction and supervision of the Directors of the Family Independence Agency and Department of Consumer and Industry Services.

5. The Directors of the Family Independence Agency and the Department of Consumer and Industry Services shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities to the departments prescribed by this Order.

6. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to any bureau, board, commission or other entity for the activities, powers, duties, functions and responsibilities transferred to the Family Independence Agency and the Department of Consumer and Industry Services by this Order are hereby respectively transferred to the Family Independence Agency and the Department of Consumer and Industry Services.

7. The Director of the Family Independence Agency and the Director of the Department of Consumer and Industry Services shall immediately initiate coordination to facilitate the transfer and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved related to the authority to be transferred.

8. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the fiscal year.

9. All rules, orders, contracts and agreements relating to the functions transferred to the Family Independence Agency and the Department of Consumer and Industry Services by this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

10. Any suit, action or other proceeding lawfully commenced by, against or before any entity transferred to the Family Independence Agency and the Department of Consumer and Industry Services by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

IV. DEPARTMENT OF LABOR

1. Except as otherwise provided in this Order, all the statutory authority, powers, duties, functions and responsibilities of the Department of Labor created by Chapter 16 of the Executive Organization Act of 1965, Act No. 380 of 1965, being Sections 16.475 et seq. of the Michigan Compiled Laws, including all boards, commissions and similar entities in the Department of Labor, are hereby transferred to the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All the statutory authority, powers, duties, functions and responsibilities of the Director of the Department of Labor are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. All the statutory authority, powers, duties, functions and responsibilities related to the promulgation of rules by boards and commissions in the Department of Labor, including, but not limited to, the following boards and commissions:

a. The Barrier Free Design Board created by Act No. 1 of the Public Acts of 1966, being Sections 125.1351 et seq. of the Michigan Compiled Laws;

b. The Board of Boiler Rules created by Act No. 290 of the Public Acts of 1965, being Sections 408.751 et seq. of the Michigan Compiled Laws;

c. The Electrical Administrative Board created by Act No. 217 of the Public Acts of 1956, being Sections 338.881 et seq. of the Michigan Compiled Laws;

d. The Elevator Safety Board created by Act No. 227 of the Public Acts of 1967, being Sections 408.801 et seq. of the Michigan Compiled Laws;

e. The Board of Mechanical Rules created by Act No. 192 of the Public Acts of 1984, being Sections 338.971 et seq. of the Michigan Compiled Laws;

f. The Employment Relations Commission created by Act No. 176 of the Public Acts of 1939, being Sections 423.1 et seq. of the Michigan Compiled Laws;

g. The Michigan Employment Security Board created by Act No. 1 of the Public Acts of 1936 (Extra Session), being Sections 421.1 et seq. of the Michigan Compiled Laws;

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h. The General Industry Safety Standards Commission, the Construction Safety Standards Commission, the Occupational Health Standards Commission and the Board of Health and Safety Compliance and Appeals created by Act No. 154 of the Public Acts of 1974, being Sections 408.1001 et seq. of the Michigan Compiled Laws;

i. The Plumbing Board created by Act No. 266 of the Public Acts of 1929, as amended, being Sections 338.901 et seq. of the Michigan Compiled Laws;

j. The State Construction Code Commission created by Act No. 230 of the Public Acts of 1972, being Sections 125.1501 et seq. of the Michigan Compiled Laws;

k. The Workers' Compensation Funds Board of Trustees, the Workers' Compensation Appellate Commission and the Workers' Compensation Board of Magistrates created by Act No. 317 of the Public Acts of 1969, being Sections 418.101 et seq. of the Michigan Compiled Laws;

are hereby transferred from the Department of Labor to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. All the statutory authority, powers, duties, functions and responsibilities of the executive director of the State Construction Code Commission set forth in the relevant sections of Act No. 230 of the Public Acts of 1972, being Sections 125.1501 et seq. of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws, and the position is hereby abolished.

5. All the statutory authority, powers, duties, functions and responsibilities of the Board of Trustees of the funds established in Chapter 5 of Act No. 317 of the Public Acts of 1969, as amended, being Section 418.501 et seq. of the Michigan Compiled Laws, related to the management activities of budgeting, procurement, personnel, equipment, facilities and the appointment and salary of the funds administrator, are transferred from the Department of Labor to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

6. All the statutory authority, powers, duties, functions and responsibilities of the Wage Deviation Board set forth in the relevant sections of Act No. 154 of the Public Acts of 1964, being Sections 408.381 et seq of the Michigan Compiled Laws, are transferred from the Department of Labor to the Director of the Department of Consumer and Industry Services by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

7. All the statutory authority, powers, duties, functions and responsibilities of the Commission established under Section 8 of Act No. 188 of the Public Acts of 1913, being Section 427.8 of the Michigan Compiled Laws, are hereby transferred to the directors of the state departments having jurisdiction over hotels, inns, and public lodging houses, including, but not limited to, the directors of the Departments of Agriculture, Community Health and Consumer and Industry Services, by a Type III transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

8. The Directors of the Department of Consumer and Industry Services, Department of Community Health, and Department of Agriculture shall provide executive direction and supervision for the implementation of the respective transfers. The assigned functions shall be administered as provided in this Order, and all prescribed functions of rule-making, licensing and registration including the prescription of rules, regulations, standards, and adjudications; shall be transferred to the directors of the various agencies as provided in this Order; unless otherwise precluded by this Order.

9. The Directors of the Department of Consumer and Industry Services, Department of Community Health, and Department of Agriculture shall make such internal organizational changes as may be administratively necessary to efficiently administer the transferred programs and complete the realignment of responsibilities prescribed by this Order.

10. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Department of Labor for the transferred functions are hereby respectively transferred to the Department of Consumer and Industry Services, Department of Agriculture or Community Health.

11. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

12. The Director of the Department of Consumer and Industry Services and the Director of the Department of Labor shall immediately initiate coordination to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and

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regulations, or other obligations to be resolved by the Department of Labor.

13. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

14. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

15. The Department of Labor is hereby abolished.

V. DEPARTMENT OF TREASURY

1. All the statutory authority, powers, duties, functions and responsibilities of the Department of Treasury relating to enforcement, investigation and collection of past due and delinquent corporate privilege and franchise fees and license fees in Act No. 122 of the Public Acts of 1941, being Section 205.13 (f) of the Michigan Compiled Laws, are hereby transferred from the Department of Treasury to the Director of the Department of Consumer and Industry Services by a Type II transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Consumer and Industry Services and the State Treasurer shall provide executive direction and supervision for the implementation of the respective transfers. The assigned functions shall be administered as provided in this Order, and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards, and adjudications, shall be transferred to the directors of the various agencies as provided in this Order, unless otherwise precluded by this Order.

3. The Director of the Department of Consumer and Industry Services and the State Treasurer shall make such internal organizational changes as may be administratively necessary to efficiently administer the transferred programs and complete the realignment of responsibilities prescribed by this Order.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Department of Treasury for the transferred functions are hereby transferred to the Department of Consumer and Industry Services.

5. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

6. The Director of the Department of Consumer and Industry Services and the State Treasurer shall immediately initiate coordination to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Treasury relating to the transferred functions.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

VI. DEPARTMENT OF MANAGEMENT AND BUDGET

1. All the authority, powers, duties, functions and responsibilities of the Office of Drug Control Policy created in Executive Order 1991-20 are hereby transferred from the Department of Management & Budget to the Department of Community Health, by a Type I transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Community Health shall provide executive direction and supervision for the implementation of the transfers.

3. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Office of Drug Control Policy for the activities transferred are hereby transferred to the Department of Community Health to the extent required to provide for the efficient and effective operation of the Office of Drug Control Policy.

5. The Department of Community Health shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of the Department of Community Health and the Director of the Department of Management and Budget shall immediately initiate coordination to facilitate the transfer and develop memoranda record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or obligations to be resolved by the Office of Drug Control Policy.

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7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

VII. DEPARTMENT OF AGRICULTURE

1. All the statutory authority, powers, duties, functions and responsibilities of the Sheltered Environment program, including but not limited to the statutory authority, powers, duties, functions and responsibilities set forth in Part 124 of the Public Health Code, Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.12491 et seq. of the Michigan Compiled Laws, including the insect and rodent control program, are hereby transferred from the Department of Community Health to the Director of the Department of Agriculture by a Type II transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of the transfers.

3. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Community Health for the activities transferred are hereby transferred to the Department of Agriculture to the extent required to provide for the efficient and effective operation of the Sheltered Environment program.

5. The Department of Agriculture shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of the Department of Community Health and the Director of the Department of Agriculture shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or obligations to be resolved by the Department of Community Health.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days from the filing of this Order.

History: 1996, E.R.O. No. 1996-2, Eff. May 15, 1996.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For renaming division on deafness to division on deaf and hard of hearing, and renaming council on deafness to advisory council on deaf and hard of hearing, see E.R.O. No. 2002-6, compiled MCL 445.1991 of the Michigan Compiled Laws.

For renaming the department of consumer and industry services to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of commission on disability concerns from family independence agency to department of labor and economic growth by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Administrative rules: R 125.1101 et seq.; R 325.2401 et seq.; R 325.13101 et seq.; R 325.52501 et seq.; R 325.70101 et seq.; R 338.251 et seq.; R 339.23101; R 400.5106; R 408.43i; R 408.43s; R 408.801 et seq.; R 408.6202 et seq.; R 408.9002 et seq.; R 408.31070; R 408.31087 et seq.; R 408.41401 et seq.; R 418.10104 et seq. of the Michigan Administrative Code.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1997-12

445.2002 Transfer of powers and duties of state survey and remonumentation commission, scientific advisory commission, and committees created by § 722.112(2) to the director of the department of consumer and industry services by type III transfer; transfer of authority of liquor control commission to designate member as chairperson to governor; transfer of powers and duties of state exposition and fairgrounds office from director of department of consumer and industry services to director of agriculture; transfer of state exposition and fairgrounds council to department of agriculture by type II transfer; renaming of mobile home commission as manufactured housing commission and transfer of powers and duties from department of consumer and industry services to manufactured housing commission.

WHEREAS, Article V, Section 1 of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, the reorganization of the state's licensing, permitting and registration functions into the Department of Consumer and Industry Services has resulted in better coordination between regulatory programs and a higher level of service to the Michigan public; and

WHEREAS, it is necessary to assure that the Director of the Department of Consumer and Industry Services has the authority to complete the process of restructuring the state's licensing, permitting and registration functions; and

WHEREAS, the Michigan State Fair is the nation's oldest state fair and continues its tradition of showcasing Michigan's agricultural community by providing information to its visitors about farm life and farm production; and

WHEREAS, there is a need for closer coordination between the Michigan State Fair, the Upper Peninsula State Fair and Michigan's county fairs; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

A. Department of Consumer and Industry Services

1. All the statutory authority, powers, duties, functions and responsibilities of the State Survey and Remonumentation Commission created by Act No. 345 of the Public Acts of 1990, as amended, being Sections 54.261 et seq. of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the commission is abolished.

4. All the statutory authority, powers, duties, functions and responsibilities of the Scientific Advisory Commission created by Section 7206 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being Section 333.7206 of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the commission is abolished.

5. All the statutory authority, powers, duties, functions and responsibilities of the ad hoc committees created by Section 2(2) of Act No. 116 of the Public Acts of 1973, being Section 722.112(2) et seq. of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and all ad hoc committees created pursuant to this provision are abolished. The Director may at his or her discretion establish advisory committees to

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review existing rules or proposed changes to rules affecting child care organizations covered by Act No. 116, as amended.

6. All the statutory authority of the Liquor Control Commission to designate one of its members as chairperson of the Commission pursuant to Section 5 of the Liquor Control Act, Act No. 8 of the Public Acts of 1933, Ex. Sess., being Section 436.5 of the Michigan Compiled Laws, is hereby transferred to the Governor.

7. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of the transfers.

8. The Director of the Department of Consumer and Industry Services shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

9. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to any entity for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Director of the Department of Consumer and Industry Services.

10. The Director of the Department of Consumer and Industry Services may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent that such duty or power is delegated by the Director of the Department of Consumer and Industry Services.

11. All rules, orders, contracts, declaratory rulings, agreements and other actions relating to the functions transferred to the Department of Consumer and Industry Services by this Order lawfully adopted prior to the effective date of this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

12. Any suit, action or other proceeding lawfully commenced by, against or before any entity transferred to the Department of Consumer and Industry Services by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

B. State Fair

1. All the statutory authority, powers, duties, functions and responsibilities of the State Exposition and Fairgrounds Office created under the Michigan Exposition and Fairgrounds Act, Act No. 361 of the Public Acts of 1978, being Sections 285.161 et seq. of the Michigan Compiled Laws, are hereby transferred from the Director of the Department of Consumer and Industry Services to the Director of the Department of Agriculture.

2. All the statutory authority, powers, duties, functions and responsibilities of the Director of the Department of Consumer and Industry Services and the Department of Consumer and Industry Services under the Michigan Exposition and Fairgrounds Act, Act No. 361 of the Public Acts of 1978, being Sections 285.161 et seq. of the Michigan Compiled Laws, and Executive Order 1993-25, are hereby transferred to the Director of the Department of Agriculture.

3. The State Exposition and Fairgrounds Council is hereby transferred to the Department of Agriculture by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

4. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of the transfers.

5. The Director of the Department of Agriculture shall administer the assigned functions in such ways as to promote efficient administration and shall make such internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Consumer and Industry Services for the functions transferred by this order are hereby transferred to the Department of Agriculture. The Departments of Consumer and Industry Services and Agriculture shall jointly develop a memorandum of understanding pertaining to the allocation of resources between the two agencies.

7. All rules, orders, contracts, declaratory rulings, agreements and other actions relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. The directors of the Departments of Agriculture and Consumer and Industry Services shall immediately initiate coordination to facilitate the transfer and jointly develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal state laws and regulations, or other obligations to be resolved.

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9. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. Mobile Home Commission

1. The Mobile Home Commission created by the Mobile Home Commission Act, Act No. 96 of the Public Acts of 1987, as amended, being Sections 125.2301 et seq. of the Michigan Compiled Laws, is renamed the Manufactured Housing Commission. All the statutory authority, powers, duties, functions and responsibilities of the Manufactured Housing Commission, which were transferred to the Director of the Department of Consumer and Industry Services by Executive Order 1996-2, are, with the exception of all authority for rulemaking contained in Act No. 96, transferred to the Manufactured Housing Commission.

The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling the financial transactions and records related to this Order in the state's financial management system for the remainder of the fiscal year in which this Order takes effect.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective sixty (60) days after filing.

History: 1997, E.R.O. No. 1997-12, Eff. Oct. 15, 1997;—Am. 1997, E.R.O. No. 1997-13, Eff. Dec. 13, 1997.

Compiler's note: Paragraphs 2. and 3. of Part A of Executive Reorganization Order No. 1997-12, as originally enacted, were rescinded by Executive Reorganization Order No. 1997-13, Eff. Dec. 13, 1997, and read as follows:

"2. All the statutory authority, powers, duties, functions and responsibilities of the Board of Physical Therapy created by Part 178 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being Sections 333.17801 et seq. of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer, as defined Section by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the board is abolished.

"3. All the statutory authority, powers, duties, functions and responsibilities of the Board of Occupational Therapists created by Part 183 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being Sections 333.18301 et seq. of the Michigan Compiled Laws, are hereby transferred to the Director of the Department of Consumer and Industry Services by a Type III transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the board is abolished."

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2000-2

445.2003 Creation of the office of financial and insurance services as type I agency within department of consumer and industry services; transfer of securities functions of the corporation, securities and land development bureau to the office of financial and insurance services; transfer of insurance bureau functions to the office of financial and insurance services; transfer of financial institutions bureau functions to the office of financial and insurance services.

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the state of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, in order to enhance competition in the financial services industry and allow U.S. companies to effectively compete in the global market, the United States Congress recently enacted the Gramm-Leach-Bliley Act of 1999 which provides for the affiliation of banks, securities firms, insurance companies and other financial services providers; and

WHEREAS, reorganizing the regulation of insurance, financial institutions and securities into one office within the Department of Consumer and Industry Services will ensure improved service and protection for consumers; and

WHEREAS, the consolidation of the regulation of insurance, financial institutions and securities will provide maximum regulatory flexibility to allow Michigan companies to compete effectively in the national and international marketplace.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. CREATION OF THE OFFICE OF FINANCIAL AND INSURANCE SERVICES

A. The Office of Financial and Insurance Services is hereby created as a Type I agency within the Department of Consumer and Industry Services. This Office shall be headed by a Commissioner of Financial and Insurance Services who shall be appointed by the Governor for a four-year term, commencing upon the effective date of this Executive Order.

II. TRANSFER OF SECURITIES FUNCTIONS OF THE CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

A. All the authority, powers, duties, functions and responsibilities of the Securities Administrator under the Uniform Securities Act, Act No. 265 of the Public Acts of 1964, as amended, being Section 451.501 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. All the authority, powers, duties, functions and responsibilities of the Corporations, Securities and Land Development Bureau under the Debt Management Act, Act No. 148 of the Public Acts of 1975, as amended, being Section 451.411 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

C. All the authority, powers, duties, functions and responsibilities of the Corporations, Securities and Land Development Bureau under the Living Care Disclosure Act, Act No. 440 of the Public Acts of 1976, as amended, being Section 554.801 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

III. TRANSFER OF INSURANCE BUREAU FUNCTIONS

A. All the authority, powers, duties, functions and responsibilities of the Commissioner of Insurance created by Chapter 2 of Act No. 218 of the Public Acts of 1956, as amended, being Section 500.200 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Commissioner of the Office

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of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. All the authority, powers, duties, functions and responsibilities of the Insurance Bureau under Act No. 218 of the Public Acts of 1956, as amended, being Section 500.100 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

C. The Insurance Bureau and the Commissioner of Insurance are abolished.

D. All the authority, powers, duties, functions and responsibilities of the Insurance Bureau and of the Commissioner of Insurance, including but not limited to the following, are hereby transferred by a Type III transfer to the Commissioner of the Office of Financial and Insurance Services and the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, as applicable:

1. Act No. 218 of the Public Acts of 1956, as amended, being Section 500.100 et seq. of the Michigan Compiled Laws (known as the Insurance Code of 1956).

2. Part 210 of Act No. 368 of the Public Acts of 1978, as amended, being Section 333.21001 et seq. of the Michigan Compiled Laws (known as the Health Maintenance Organizations Act).

3. Act No. 317 of the Public Acts of 1969, as amended, being Section 418.101 et seq. of the Michigan Compiled Laws (known as the Worker's Disability Compensation Act of 1969).

4. Act No. 66 of the Public Acts of 1933, as amended, being Section 550.1 et seq. of the Michigan Compiled Laws.

5. Act No. 385 of the Public Acts of 1996, as amended, being Section 550.11 et seq. of the Michigan Compiled Laws.

6. Act No. 233 of the Public Acts of 1984, as amended, being Section 550.51 of the Michigan Compiled Laws (known as the Prudent Purchaser Act).

7. Act No. 266 of the Public Acts of 1895, as amended, being Section 550.101 et seq. of the Michigan Compiled Laws.

8. Act No. 143 of the Public Acts of 1935, as amended, being Section 550.231 et seq. of the Michigan Compiled Laws.

9. Act No. 64 of the Public Acts of 1984, as amended, being Section 550.251 et seq. of the Michigan Compiled Laws (known as the Coordination of Benefits Act).

10. Act No. 125 of the Public Acts of 1963, as amended, being Section 550.351 et seq. of the Michigan Compiled Laws.

11. Act No. 386 of the Public Acts of 1996, as amended, being Section 550.521 et seq. of the Michigan Compiled Laws.

12. Act No. 173 of the Public Acts of 1958, as amended, being Section 550.601 et seq. of the Michigan Compiled Laws (known as the Credit Insurance Act).

13. Act No. 388 of the Public Acts of 1913, as amended, being Section 550.701 et seq. of the Michigan Compiled Laws.

14. Act No. 218 of the Public Acts of 1984, as amended, being Section 550.901 et seq. of the Michigan Compiled Laws (known as the Third Party Administrator Act).

15. Act No. 252 of the Public Acts of 1986, as amended, being Section 550.1001 et seq. of the Michigan Compiled Laws (known as the Health Benefit Agent Act).

16. Act No. 350 of the Public Acts of 1980, as amended, being Section 550.1101 et seq. of the Michigan Compiled Laws (known as the Nonprofit Health Care Corporation Reform Act).

IV. TRANSFER OF FINANCIAL INSTITUTIONS BUREAU FUNCTIONS

A. All the authority, powers, duties, functions and responsibilities of the Commissioner of the Financial Institutions Bureau, created under Chapter 2 of Act No. 319 of the Public Acts of 1969, as amended, being Section 487.311 et seq. of the Michigan Compiled Laws, and its successor, Section 2101 of Act No. 276 of the Public Acts of 1999, being Section 487.12101 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Commissioner of the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. All the authority, powers, duties, functions and responsibilities of the Financial Institutions Bureau, created under Act No. 319 of the Public Acts of 1969, as amended, being Section 487.301 et seq. of the Michigan Compiled Laws, and its successor, Act No. 276 of the Public Acts of 1999, being Section 487.11101 et seq. of the Michigan Compiled Laws, are hereby transferred by a Type III transfer to the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as

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amended, being Section 16.103 of the Michigan Compiled Laws.

C. The Financial Institutions Bureau and the Commissioner of the Financial Institutions Bureau are abolished.

D. All the authority, powers, duties, functions and responsibilities of the Financial Institutions Bureau and the Commissioner of the Financial Institutions Bureau, including but not limited to the following, are hereby transferred by a Type III transfer to the Commissioner of the Office of Financial and Insurance Services and the Office of Financial and Insurance Services, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, as applicable:

1. Act No. 319 of Public Acts of 1969, as amended, being Section 487.301 et seq. of the Michigan Compiled laws, and its successor, Act No. 276 of the Public Acts of 1999, being Section 487.11101 et seq. of the Michigan Compiled Laws.

2. Act No. 173 of the Public Acts of 1987, as amended, being Section 445.1651 et seq. of the Michigan Compiled Laws (known as the Mortgage, Brokers, Lenders, and Servicers Licensing Act).

3. Act No. 136 of the Public Acts of 1960, as amended, being Section 487.901 et seq. of the Michigan Compiled Laws (known as the Sale of Checks Act).

4. Act No. 89 of the Public Acts of 1986, as amended, being Section 487.1101 et seq. of the Michigan Compiled Laws (known as the Michigan BIDCO Act).

5. Act No. 161 of the Public Acts of 1988, as amended, being Section 487.2051 et seq. of the Michigan Compiled Laws (known as the Consumer Financial Services Act).

6. Act No. 285 of the Public Acts of 1925, as amended, being Section 490.1 et seq. of the Michigan Compiled Laws.

7. Act No. 41 of the Public Acts of 1968, as amended, being Section 490.51 et seq. of the Michigan Compiled Laws.

8. Act No. 31 of the Public Acts of 1992, as amended, being Section 490.81 et seq. of the Michigan Compiled Laws.

9. Act No. 307 of the Public Acts of 1980, as amended, being Section 491.102 et seq. of the Michigan Compiled Laws (known as the Savings and Loan Act of 1980).

10. Act No. 27 of the Public Acts of 1950, Ex Sess, as amended, being Section 492.101 et seq. of the Michigan Compiled Laws (known as the Motor Vehicle Sales Finance Act).

11. Act No. 21 of the Public Acts of 1939, as amended, being Section 493.1 et seq. of the Michigan Compiled Laws (known as the Regulatory Loan Act of 1963).

12. Act No. 125 of the Public Laws of 1981, as amended, being Section 493.51 et seq. of the Michigan Compiled Laws (Secondary Mortgage Loan Act).

13. Act No. 379 of the Public Laws of 1984, as amended, being Section 493.101 et seq. of the Michigan Compiled Laws.

14. Act No. 162 of the Public Acts of 1995, being Section 445.1851 et seq. of the Michigan Compiled Laws (known as the Credit Reform Act).

15. Act No. 354 of the Public Acts of 1996, being Section 487.3101 et seq. of the Michigan Compiled Laws (known as the Savings Bank Act).

V. MISCELLANEOUS

A. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of all transfers of authority under this Order.

B. The Director of the Department of Consumer and Industry Services shall immediately initiate coordination with the Commissioner of Insurance, the Commissioner of the Financial Institutions Bureau and the Securities Administrator to facilitate the transfer and develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved related to the authority to be transferred.

C. The Director of the Department of Consumer and Industry Services and the Commissioner of the Office of Financial and Insurance Services shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the year.

E. The Commissioner of the Office of Financial and Insurance Services may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent such duty or power is delegated by the Commissioner of the Office of Financial and Insurance Services.

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F. All records and personnel affected by this Order are hereby transferred to the Office of Financial and Insurance Services.

G. All property, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available for the activities, power, duties, functions and responsibilities transferred by this Order are hereby transferred to the Department of Consumer and Industry Services.

H. All rules, orders, contracts and agreements relating to the functions transferred to the Office of Financial and Insurance Services by this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

I. Any suit, action or other proceeding lawfully commenced by, against or before any entity transferred to the Office of Financial and Insurance Services by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

J. The budgeting, human resource, procurement, technology, and related functions of the Office of Financial and Insurance Services shall be performed under the direction and supervision of the Director of the Department of Consumer and Industry Services.

K. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the state of Michigan of 1963, the provisions of this Executive Order shall take effect April 3, 2000.

History: 2000, E.R.O. No. 2000-2, Eff. Apr. 3, 2000.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2002-1

445.2004 Creation of bureau of worker's and unemployment compensation as type I agency within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and the unemployment agency to bureau of worker's and unemployment compensation by type III transfer; transfer of powers and duties of director of the bureau of worker's compensation and director of the unemployment agency to director of bureau of worker's and unemployment compensation by type III transfer; transfer of powers and duties of wage and hour division of the worker's compensation board of magistrates to bureau of worker's and unemployment compensation by type II transfer.

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the statutory powers, functions, duties and responsibilities assigned to the Bureau of Worker's Compensation, the Unemployment Agency, the Worker's Compensation Board of Magistrates, and the Wage and Hour Division can be more effectively carried out by a new Bureau of Worker's and Unemployment Compensation; and

WHEREAS, the missions of the Bureau of Worker's Compensation and the Unemployment Agency are related to maintaining a system for the timely payment of benefits on behalf of Michigan workers and employers; and

WHEREAS, there is a need for more sharing of data and information between the Bureau of Worker's Compensation and the Unemployment Agency to more efficiently meet statutory requirements relating to coordination of worker's compensation and unemployment compensation benefits; and

WHEREAS, the Wage and Hour Division serves the citizens of Michigan by protecting wages and fringe benefits to which workers are entitled and assuring appropriate employment and working conditions for young people;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. The “Department of Consumer and Industry Services” means the principal department of state government created by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

B. The “Bureau of Worker's Compensation” means the bureau established within the Department of Labor by Section 201 of Act 317 of the Public Acts of 1969, as amended, being Section 418.201 of the Michigan Complied Laws, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

C. The “Unemployment Agency” means the agency established within the Department of Consumer and Industry Services by Executive Order 1997-12, being Section 421.94 of the Michigan Compiled Laws.

D. The “Worker's Compensation Board of Magistrates” means the board established as an autonomous entity within the Department of Labor by Section 213 of Act 317 of the Public Acts of 1969, as amended, being Section 418.213 of the Michigan Compiled Laws, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

E. The “Wage and Hour Division” means the division created on January 31, 1992 as an agency within the Bureau of Safety and Regulation within the Department of Labor, the functions of which were subsequently transferred to the Department of Consumer and Industry Services by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

II. CREATION OF THE BUREAU OF WORKER'S AND UNEMPLOYMENT COMPENSATION

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A. The Bureau of Worker's and Unemployment Compensation is hereby created as a Type I agency within the Department of Consumer and Industry Services. The bureau shall exercise its prescribed statutory powers, duties and functions of rulemaking, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. All budgeting, procurement and related management functions of the bureau shall be performed under the direction and supervision of the head of the department.

B. The Bureau of Worker's and Unemployment Compensation shall be headed by a Director who shall be appointed by the Governor.

C. All of the statutory authority, powers, functions, duties and responsibilities of the Bureau of Worker's Compensation are transferred to the Bureau of Worker's and Unemployment Compensation by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

D. All of the statutory authority, powers, functions, duties and responsibilities of the Unemployment Agency are transferred to the Bureau of Worker's and Unemployment Compensation by Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

E. All of the statutory powers, functions, duties, and responsibilities of the Director of the Bureau of Worker's Compensation established in Chapter 2 of the Worker's Disability Compensation Act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being Section 418.201 et. seq. of the Michigan Compiled Laws, are transferred to the Director of the Bureau of Worker's and Unemployment Compensation by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

F. All of the statutory powers, functions, duties, and responsibilities of the Director of the Unemployment Agency created in Section 5 of the Michigan Employment Security Act, Act No. 1 of the Public Acts of 1936 (Ex. Sess.), as amended, being Section 421.5 of the Michigan Compiled Laws, and defined as the Director of Employment Security in Executive Order 1997-12 are transferred to the Director of the Bureau of Worker's and Unemployment Compensation by a Type III transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

G. All of the statutory powers, functions, duties, and responsibilities of the Worker's Compensation Board of Magistrates established by Section 213 of the Worker's Disability Compensation Act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being Section 418.213 of the Michigan Compiled Laws, are transferred to the Bureau of Worker's and Unemployment Compensation.

H. All of the statutory authority, powers, functions, duties and responsibilities of the Wage and Hour Division in the Department of Consumer and Industry Services, including, but not limited to, those set forth in:

1. Act No. 154 of the Public Acts of 1964, as amended, being Sections 408.381 et. seq. of the Michigan Compiled Laws (Minimum Wage Law of 1964);

2. Act No. 390 of the Public Acts of 1978, as amended, being Sections 408.471 et. seq. of the Michigan Compiled Laws (Wage and Benefits Act);

3. Act No. 166 of the Public Acts of 1965, as amended, being Sections 408.551 et. seq. of the Michigan Compiled Laws (Prevailing Wage Act);

4. Act No. 90 of the Public Acts of 1978, as amended, being Sections 409.101 et. seq. of the Michigan Compiled Laws (the Youth Employment Standards Act);

are transferred to the Bureau of Worker's and Unemployment Compensation by Type II transfer as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

III. MISCELLANEOUS

A. The Director of the Department of Consumer and Industry Services shall provide executive direction and supervision for the implementation of the transfers made under this Order. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Consumer and Industry Services.

B. The Director of the Department of Consumer and Industry Services shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

C. The Director of the Department of Consumer and Industry Services shall immediately initiate coordination with the Bureau of Worker's Compensation, the Unemployment Agency, the Worker's Compensation Board of Magistrates, and the Bureau of Safety and Regulation to facilitate the transfers and

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develop memoranda of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Bureau of Worker's Compensation and the Unemployment Agency.

D. All records, personnel, property, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available for the activities, power, duties, functions and responsibilities transferred by this Order are hereby transferred to the Bureau of Worker's and Unemployment Compensation.

E. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of the year.

F. The Director of the Bureau of Worker's and Unemployment Compensation may by written instrument delegate a duty or power conferred by law or this Order and the person to whom such duty or power is so delegated may perform such duty or exercise such power at the time and to the extent such duty or power is delegated by the Director of the Bureau of Worker's and Unemployment Compensation.

G. All rules, orders, contracts and agreements relating to the functions transferred to the Bureau of Worker's and Unemployment Compensation by this Order by the responsible state agency shall continue to be effective until revised, amended or rescinded.

H. Any suit, action or other proceeding lawfully commenced by, against or before any entity effected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

I. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

J. The Bureau of Worker's Compensation, the position of Director of the Bureau of Worker's Compensation, the Unemployment Agency, and the position of Director of the Unemployment Agency are hereby abolished.

History: 2002, E.R.O. No. 2002-1, Eff. Apr. 8, 2002.

Compiler's note: In section I., paragraph B., the reference to “Michigan Complied Laws” evidently should read “Michigan Compiled Laws.”

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For creation of the workers' compensation agency as type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of worker's compensation and of its director, to the bureau of worker's compensation, and its director, under MCL 445.2004, to the workers' compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For creation of the unemployment insurance agency as type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the unemployment agency, transferred to the bureau of worker's and unemployment compensation under MCL 445.2004, to the bureau to the unemployment insurance agency, see E.R.O. No 2003-1, compiled at MCL 445.2011.

Administrative rules: R 408.43i; R 408.43s; R 408.6202 et seq.; R 408.9002 et seq.; and R 418.10104 et seq. of the Michigan Administrative Code.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2003-1

445.2011 Transfer of certain bureaus, commissions, committees, programs, and authorities from department of consumer and industry services to department of community health, family independence agency, and department of transportation; rename department of consumer and industry services to department of labor and economic growth; transfer certain authorities, councils, commissions, and functions from department of treasury, family independence agency, department of management and budget, department of state police, and department of career development to department of labor and economic growth; abolishment of department of career development.

WHEREAS, Article V, Section 1 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Article V, Section 2 of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Article V, Section 8 of the Michigan Constitution of 1963 provides that each principal department shall be under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, the Department of Commerce was created as a principal department of state government under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325;

WHEREAS, the Department of Commerce was renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001;

WHEREAS, the Department of Labor was created as a principal department of state government under Section 375 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.475;

WHEREAS, certain authority, powers, duties, functions, and responsibilities of the Department of Labor were transferred to the Department of Consumer and Industry Services and the Department of Labor was abolished under Executive Order 1996-2, MCL 445.2001;

WHEREAS, reorganizing labor and economic development functions into one principal department will ensure more efficient use of taxpayer dollars and will allow the state to offer more streamlined services;

WHEREAS, because the development of cooperative economic alliances between business and labor will improve the lives of Michigan's working families and the vitality of Michigan's businesses, the State of Michigan should encourage such alliances;

WHEREAS, Michigan's already successful economic development programs will benefit from greater consolidation of and linkage to workforce development programs;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, pursuant to the power vested in the Governor by the Michigan Constitution of 1963 and Michigan law order:

I. DEFINITIONS

As used in this Order:

A. “Appellate Commissioner” means a member of the new Workers' Compensation Appellate Commission created under Section II.P of this Order.

B. “Brownfield Redevelopment Board” means the board created within the Department of Environmental Quality under Section 20104a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20104a.

C. “Bureau of Heath Services” means the organizational unit of the Department and Consumer and Industry Services designated as the Bureau of Health Services.

D. “Bureau of Health Systems” means the organizational unit of the Department of Consumer and Industry Services designated as the Bureau of Health Systems.

E. “Bureau of Worker's Compensation” means the bureau established within the Department of Labor under Section 201 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.201, transferred to the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and then transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004.

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F. “Bureau of Worker's and Unemployment Compensation” means the bureau established within the Department of Consumer and Industry Services under Executive Order 2002-1, MCL 445.2004.

G. “Commission for the Blind” means the commission created in the Department of Labor under Section 2 of 1978 PA 260, MCL 393.352, and transferred to the Family Independence Agency under Executive Order 1996-2, MCL 445.2001.

H. “Department of Career Development” means the principal department of state government created under Executive Order 1999-1, MCL 408.40.

I. “Department of Consumer and Industry Services” means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001.

J. “Department of Labor and Economic Growth” means the principal department of state government formerly known as the Department of Consumer and Industry Services and renamed the Department of Labor and Economic Growth under Section II.A of this Order.

K. “Department of Management and Budget” means the principal department of state government created under Section 121 of the Management and Budget Act, 1984 PA 431, MCL 18.1121.

L. “Director of Unemployment Insurance” means the director of the Unemployment Insurance Agency created under Section II.N.

M. “Director of Workers' Compensation” means the director of the Workers' Compensation Agency created under Section II.O.

N. “Family Independence Agency” means the principal department of state government created as the Department of Social Services under Section 450 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.550, and renamed the Family Independence Agency under Section 1 of the Social Welfare Act, 1939 PA 280, MCL 400.1.

O. “Former Wage and Hour Division” means the organizational unit created on January 31, 1992 within the Bureau of Safety and Regulation within the Department of Labor, the functions of which were transferred to the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and then transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004.

P. “Former Worker's Compensation Appellate Commission” means the Worker's Compensation Appellate Commission created under Section 274 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.274.

Q. “Michigan Broadband Development Authority” means the public body corporate and politic created under Section 4 of the Michigan Broadband Development Authority Act, 2002 PA 49, MCL 484.3204.

R. “Michigan Economic Development Corporation” means the public body corporate created under Section 28 of Article VII of the Michigan Constitution of 1963 and the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, and subsequently amended, between local participating economic development corporations formed under the Economic Development Corporations Act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan Strategic Fund.

S. “Michigan Economic Growth Authority” means the authority created under the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.801 to 207.810, and transferred to the Michigan Strategic Fund under Executive Order 1999-1, MCL 408.40.

T. “Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority” means the authority created and established as an autonomous agency within the Department of Consumer and Industry Services under Section 3 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3103.

U. “Michigan Next Energy Authority” means the public body corporate and politic created under Section 3 of the Michigan Next Energy Authority Act, 2002 PA 593, MCL 207.823.

V. “Michigan Strategic Fund” means the public body corporate and politic created under Section 5 of the Michigan Strategic Fund Act, 1984 PA 270, MCL 125.2005, and transferred to the Department of Management and Budget under Executive Order 1999-1, MCL 408.40, and includes the board of the Michigan Strategic Fund.

W. “Qualifications Advisory Committee” or “QAC” means the committee required under Section 209 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.209. References in this Order to the “new Qualifications Advisory Committee” or “new QAC” mean the committee required under Section 209 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.209, as modified under this Order.

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X. “State Bar of Michigan” means the public body corporate under Section 901 of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.901, the membership of which consists of all persons licensed to practice law in this state.

Y. “State Budget Director” means the director of the State Budget Office created under Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

Z. “Type I Agency” means an agency established consistent with Section 3(a) of the Executive Organization Act of 1963, 1965 PA 380, MCL 16.103(a).

AA. “Type I Transfer” means that type of transfer as defined in Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(a).

BB. “Type II Agency” means an agency established consistent with Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(b).

CC. “Type II Transfer” means that type of transfer as defined in Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(b).

DD. “Type III Transfer” means that type of transfer as defined in Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103(c).

EE. “Type IV Transfer” means a basic type transfer where all statutory authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting, procurement, personnel, and management-related functions are retained by the transferred entity and the transferred entity remains an autonomous entity, in the same manner as the Michigan Employment Security Commission was designated an autonomous entity within the Michigan Department of Labor under Section 379 of the Executive Organization Act, 1965 PA 380, MCL 16.479, and the Michigan Strategic Fund was transferred to the Michigan Department of Management and Budget under Executive Order 1999-1, MCL 408.40.

FF. “Unemployment Insurance Agency” means the organizational unit within the Department of Labor and Economic Growth created under Section II.N.

GG. “Wage and Hour Administrator” means the head of the new Wage and Hour Division created under Section II.L.

HH. “Wage and Hour Division” means the new Wage and Hour Division, an organizational unit within the Department of Labor and Economic Growth created under Section II.L.

II. “Worker's Compensation Board of Magistrates” or “Board of Magistrates” means the board established as an autonomous entity within the Department of Labor under Section 213 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.213, the functions of which were transferred to the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and then transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004.

JJ. “Workers' Compensation Agency” means the organizational unit within the Department of Labor and Economic Growth created under Section II.O.

KK. “Workers' Compensation Appellate Commission” means the new Workers' Compensation Appellate Commission established under Section II.P.

II. DEPARTMENT OF LABOR AND ECONOMIC GROWTH

A. General

1. Consistent with Article V, Section 2 of the Michigan Constitution of 1963, which limits the number of principal departments to 20, the Department of Consumer and Industry Services is renamed the Department of Labor and Economic Growth and will continue as a principal department of the Executive Branch.

2. Any and all statutory references to the Department of Consumer and Industry Services not inconsistent with this Order shall be deemed references to the Department of Labor and Economic Growth.

3. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of all transfers to the Department of Labor and Economic Growth under this Section II. The functions transferred to the Department of Labor and Economic Growth under this Section II shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth to the extent provided in this Order, including but not limited to all prescribed functions of rule-making, licensing, registration, and the prescription of rules, regulations, standards, and adjudications.

4. Any authority, duties, powers, functions, and responsibilities transferred in this Section II may in the future be reorganized to promote efficient administration by the Director of the Department of Labor and Economic Growth.

5. The Director of the Department of Labor and Economic Growth shall, in addition to the other duties and responsibilities given to the Director under this Order, or assigned or transferred to the Director as head of the

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Department of Labor and Economic Growth, be responsible for the oversight and supervision of the employees of the Department of Labor and Economic Growth and for the operations of the Department of Labor and Economic Growth. The Director shall also perform other duties and exercise other powers as the Governor may prescribe.

6. The Director of the Department of Labor and Economic Growth may perform a duty or exercise a power conferred by law or executive order upon the Director at the time and to the extent the duty or power is delegated to the Director by law or order.

7. The Director of the Department of Labor and Economic Growth may by written instrument delegate a duty or power conferred by law or order to an authorized representative and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent the duty or power is delegated by the Director of the Department of Labor and Economic Growth.

8. The Director of the Department of Labor and Economic Growth shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

B. Advisory Council on Deaf and Hard of Hearing

1. The Advisory Council on Deaf and Hard of Hearing created as the Advisory Council on Deafness within the Department of Labor under the Division on Deafness Act, 1937 PA 72, MCL 408.201 to 408.210, transferred from the Department of Labor to the Family Independence Agency under Executive Order 1996-2, MCL 445.2001, and renamed under Executive Order 2002-10, MCL 445.1991, is transferred by Type II Transfer from the Family Independence Agency to the Department of Labor and Economic Growth.

2. Any records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Family Independence Agency for the activities, powers, duties, functions, and responsibilities transferred by this Section II.B are transferred to the Department of Labor and Economic Growth.

3. The Director of the Department of Labor and Economic Growth, after consultation with the Director of the Family Independence Agency, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

4. The Directors of the Department of Labor and Economic Growth and the Family Independence Agency shall immediately initiate coordination to facilitate the transfers under this Section II.B and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Family Independence Agency.

5. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under this Section II.B in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

C. Bureau of Construction Codes and Fire Safety

1. Any authority, powers, duties, functions, and responsibilities, including but not limited to the functions of budgeting, procurement, management-related functions, and functions under the Fire Prevention Code, 1941 PA 207, MCL 29.1 to 29.34, of the Fire Marshal Division of the Department of State Police, except any authority, powers, duties, functions, and responsibilities previously transferred from the Department of State Police under Executive Order 1997-2, MCL 29.451, are transferred by Type II Transfer from the Department of State Police to the Department of Labor and Economic Growth, Bureau of Construction Codes and Fire Safety, except for the authority, powers, duties, functions, and responsibilities of the Department of State Police under any of the following:

a. 1978 PA 170, MCL 28.71 to 28.72, relating to the state arson strike force unit.

b. Section 6 of the Fire Prevention Code, 1941 PA 207, MCL 29.6 (fire investigations).

c. Section 7 of the Fire Prevention Code, 1941 PA 207, MCL 29.7 (criminal enforcement).

d. The Fire Investigator Training Program, including, but not limited to functions related to fire investigation training to locals under Section 109 of 2003 PA 149.

2. Any authority, powers, duties, functions, and responsibilities of the State Fire Marshal, and the authority powers, duties, functions, and responsibilities of the Director of the Department of State Police under the Fire Prevention Code, 1941 PA 207, MCL 29.1 to 29.34, except for any authority, powers, duties, functions, and responsibilities previously transferred from the State Fire Marshal or the Director of the Department of State Police under Executive Order 1997-2, MCL 29.451, and those retained within the Department of State Police under this Section II.C, are transferred by Type II Transfer to the Director of the Department of Labor and

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Economic Growth. The Director of the Department of Labor and Economic Growth may establish the position of State Fire Marshal within the Department of Labor and Economic Growth, Bureau of Construction Codes and Fire Safety.

3. Any authority, powers, duties, functions, and responsibilities of the State Fire Marshal under any of the following programs or provisions of Michigan law are transferred by Type II Transfer to the Department of Labor and Economic Growth, Bureau of Construction Codes and Fire Safety:

a. Section 204 of the Aeronautics Code of the State of Michigan, 1945 PA 327, MCL 259.204.

b. Section 77101 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.77101.

c. Section 22210 of the Public Health Code, 1978 PA 368, MCL 333.22210.

d. Section 1285a of the Revised School Code, 1976 PA 451, MCL 380.1285a.

e. 1937 PA 306, MCL 388.851 to 388.855a.

f. Section 58 of the Social Welfare Act, 1939 PA 280, MCL 400.58.

g. The Adult Foster Care Facility Licensing Act, 1979 PA 218, MCL 400.701 to 400.737.

h. Section 20 of 1967 PA 227, MCL 408.820.

i. Section 1 of 1942 (1st Ex Sess) PA 9, MCL 419.201.

j. Section 12 of the Motor Carrier Safety Act of 1963, 1963 PA 181, MCL 480.22.

k. Section 16 of 1944 (1st Ex Sess) PA 52, MCL 561.16.

l. 1973 PA 116, MCL 722.111 to 722.128.

m. The Juvenile Firesetter Intervention Program.

n. The Public Fire Education Program.

4. Any authority, powers, duties, functions, and responsibilities of the Office of Fire Safety and the State Fire Marshal under Section 3a of the Stille-DeRossett-Hale Single State Construction Code Act, 1972 PA 230, MCL 125.1503a, are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth.

5. Any authority, powers, duties, functions and responsibilities of the Director of the Department of State Police related to the functions transferred to the Department of Labor and Economic Growth by this Section II.C, are transferred by Type II Transfer from the Director of the Department of State Police to the Director of the Department of Labor and Economic Growth.

6. Any authority, powers, duties, functions, and responsibilities of the Fire Fighters Training Council under the Fire Fighters Training Council Act of 1966, 1966 PA 291, MCL 29.361 to 29.377, are transferred by Type I Transfer from the Department of State Police to the Department of Labor and Economic Growth. Any authority, powers, duties, functions, and responsibilities of the Department of State Police under the Fire Fighters Training Council Act of 1966, 1966 PA 291, MCL 29.361 to 29.377, are transferred by Type II Transfer from the Department of State Police to the Department of Labor and Economic Growth. Any authority, powers, duties, functions, and responsibilities of the Director of the Department of State Police under the Fire Fighters Training Council Act of 1966, 1966 PA 291, MCL 29.361 to 29.377, are transferred by Type II Transfer from the Director of the Department of State Police to the Director of the Department of Labor and Economic Growth.

7. The position as a member of the Fire Fighters Training Council designated under Section 3(1)(a) of the Fire Fighters Training Council Act of 1996, 1966 PA 291, MCL 29.363(1)(a), for the Director of the Department of State Police or his or her authorized representative, is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative. All the statutory authority of the Firefighters Training Council to designate from among its members a Chairperson under Section 5 of the Fire Fighters Training Council Act of 1966, 1966 PA 291, MCL 29.365, is transferred to the Governor.

8. All the statutory authority of the Fire Safety Board, created under the Fire Prevention Code, 1941 PA 207, MCL 29.1 to 29.34, and transferred to the Department of Consumer and Industry Services under Executive Order 1997-2, MCL 29.451, to designate one of its members as Chairperson of the Board pursuant to Section 3b(5) of the Fire Prevention Code, 1941 PA 207, MCL 29.3b(5), is transferred to the Governor.

9. The position of member of the Electrical Administrative Board consisting of a representative the Department of State Police, Fire Marshal Division, appointed by the Director of the Department of State Police under Section 2(1) of the Electrical Administrative Act, 1956 PA 217, MCL 338.882(1), is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

10. The position of member of the Board of Mechanical Rules designated for the State Fire Marshal or the State Fire Marshal's designee under Section 3 of the Forbes Mechanical Contractors Act, 1984 PA 192, MCL 338.973, is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

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11. Any authority, powers, duties, functions, and responsibilities of the Department of State Police and the Director of the Department of State Police under 1931 PA 328, MCL 750.243a to 750.243e (fireworks), except any authority, power, duties, functions, and responsibilities of a peace officer of this state, or a political subdivision of this state, are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth.

12. All remaining authority, powers, duties, functions, and responsibilities of the Department of State Police, the Director of the Department of State Police, the Fire Marshal Division, and the State Fire Marshal not transferred under this Section II.C are vested in the Director of the Department of State Police. The Director of the Department of State Police may create and maintain a division or other organizational unit of the Department of State Police as he or she deems necessary, expedient, and efficient, and organize or reorganize the division or organizational unit, including the appointment of division or organizational unit heads, assistants, and employees, with titles, powers, and duties related to the administration and enforcement of the authority, powers, duties, functions, and responsibilities retained under this Section II.C.

13. Any authority, powers, duties, functions, and responsibilities of the State Fire Marshal as Commissioner of the Michigan State Police ex-officio under Section 5 of 1935 PA 59, MCL 28.5, are transferred to the Director of the Department of State Police.

14. Any authority, powers, duties, functions, and responsibilities of the State Fire Marshal relating to the promulgation of rules relating to the authority, powers, duties, functions, and responsibilities retained within the Department of State Police under this Section II.C are transferred to the Director of the Department of State Police. Any authority, powers, duties, functions, and responsibilities of the State Fire Marshal or the Director of the Department of State Police relating to the promulgation of rules relating to the authority, powers, duties, functions, and responsibilities transferred to the Department of Labor and Economic Growth under this Section II.C are transferred to the Director of the Department of Labor and Economic Growth.

15. All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Fire Marshal Division for the activities transferred to the Department of Labor and Economic Growth under this Section II.C are transferred to the Department of Labor and Economic Growth.

16. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of the transfers to the Department of Labor and Economic Growth under this Section II.C. The functions assigned to the Department of Labor and Economic Growth shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

17. The Director of the Department of State Police and the Director of the Department of Labor and Economic Growth shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and State laws and regulations, or other obligations relating to the Fire Marshal Division and the transfers under this Section II.C to be resolved by the Department of State Police.

18. The Directors of the Departments of Labor and Economic Growth and State Police shall administer any assigned functions under this Section II.C in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

D. Commission for the Blind

1. Any authority, powers, duties, functions, and responsibilities of the Commission for the Blind are transferred by Type II Transfer from the Family Independence Agency to the Department of Labor and Economic Growth, including but not limited to the authority, powers, duties, functions, and responsibilities under all of the following:

a. 1978 PA 260, MCL 393.351 to 393.369.

b. Section 7a of 1913 PA 271, MCL 399.7a.

c. Section 2 of 1941 PA 205, MCL 252.52.

d. Section 4 of 1988 PA 112, MCL 450.794.

e. Section 208 of the Michigan Museum Act, 1990 PA 325, MCL 399.508.

2. Any authority, powers, duties, functions, and responsibilities of the Director of the Family Independence Agency relating to the Commission for the Blind, including but not limited to the authority, powers, duties, functions, and responsibilities assigned to the Director of the Department of Labor by 1978 PA 260, MCL 393.351 to 393.369, are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth.

3. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Family Independence Agency for the activities,

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powers, duties, functions, and responsibilities transferred by this Section II.D are transferred to the Department of Labor and Economic Growth.

4. The Director of the Department of Labor and Economic Growth, after consultation with the Director of the Family Independence Agency, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

5. The Directors of the Department of Labor and Economic Growth and the Family Independence Agency shall immediately initiate coordination to facilitate the transfers under this Section II.D and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Family Independence Agency.

6. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under this Section II.D in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

E. Commission on Disability Concerns

1. The Commission on Disability Concerns established within the Department of Labor under Executive Order 1995-11, MCL 395.351, and transferred to the Family Independence Agency under Executive Order 1996-2, MCL 445.2001, is transferred by Type II Transfer from the Family Independence Agency to the Department of Labor and Economic Growth.

2. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Family Independence Agency for the activities, powers, duties, functions, and responsibilities transferred by this Section II.E are transferred to the Department of Labor and Economic Growth.

3. The Director of the Department of Labor and Economic Growth, after consultation with the Director of the Family Independence Agency, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

4. The Directors of the Department of Labor and Economic Growth and the Family Independence Agency shall immediately initiate coordination to facilitate the transfers under this Section II.E and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Family Independence Agency.

5. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under this Section II.E in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

F. Department of Treasury

Brownfield Redevelopment Single Business Tax Credits

1. All of the following authority, powers, duties, functions, and responsibilities of the Department of Treasury or the State Treasurer related to brownfield redevelopment Single Business Tax credits for projects with a cost of $10,000,000 or less are transferred by Type II Transfer from the Department of Treasury and the State Treasurer to the Director of the Department of Labor and Economic Growth:

a. Receipt and review of applications for approval of projects, approval of applications or projects, denial of applications or projects, issuance of preapproval letters, and assignment of project numbers under Section 38g(2) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(2).

b. Consideration of criteria reasonably applicable to a project under Section 38g(6) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(6).

c. Receipt of documentation of the market value of leased property under Section 38g(10) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(10).

2. Any records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Treasury for the activities, powers, duties, functions, and responsibilities transferred under Section II.F.1, and identified for transfer under a memorandum of understanding between the Department of Treasury and the Department of Labor and Economic Growth implementing this Order, are transferred to the Department of Labor and Economic Growth. This paragraph shall not be construed to require a transfer of records prohibited under Michigan law.

3. The Director of the Department of Labor and Economic Growth, after consultation with the State Treasurer, shall provide executive direction and supervision for the implementation of the transfers under Section II.F.1. The assigned functions shall be administered under the direction and supervision of the

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Director of the Department of Labor and Economic Growth.

4. The Director of the Department of Labor and Economic Growth and the State Treasurer shall immediately initiate coordination to facilitate the transfers under Section II.F.1 and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Treasury.

5. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under Section II.F.1 in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. All of the following authority, powers, duties, functions, and responsibilities of the Department of Treasury or the State Treasurer related to brownfield redevelopment Single Business Tax credits for projects with a cost of $10,000,000 or less are transferred without regard to the type of transfer from the Department of Treasury and the State Treasurer to the Michigan Economic Growth Authority:

a. Receipt and review of documentation for project completion, accounting of project costs, eligible investment activity, and property ownership or lease information; verification of project completion; and issuance of certificates of completion under Section 38g(8) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(8).

b. Prescription of forms and receipt of assignment forms under Section 38g(17) of the Single Business Tax Act, 1975 PA 225, MCL 208.38g(17).

c. Approval of an alternative method for assigning credits or portions of credits, prescription of forms, and receipt of assignment forms under Section 38g(18) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(18).

d. Preparation of annual reports to the House of Representatives and Senate committees responsible for tax policy and economic development issues under Section 38g(30) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(30).

e. Review and approval or denial of petitions for project amendments under Section 38g(31) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(31).

f. Receipt of documentation relating to multiphase projects and multiphase project components, verification of completion of multiphase project components, and issuance of component completion certificates under Section 38g(32) of the Single Business Tax Act, 1975 PA 228, MCL 208.38g(32).

7. All the authority, power, duties, functions, and responsibilities of the State Treasurer under Section 38g(3) of the Single Business Tax Act, 1975 PA 225, MCL 208.38g(3), to concur with the approval by the Michigan Economic Growth Authority of applications for projects with a cost of more than $10,000,000, or to approve or deny applications for projects with a cost of more than $10,000,000 shall remain with the State Treasurer and are not transferred under this Order.

8. Any records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Treasury for the activities, powers, duties, functions, and responsibilities transferred under Section II.F.6, and identified for transfer under a memorandum of understanding between the Department of Treasury and the Michigan Economic Growth Authority implementing this Order, are transferred to the Michigan Economic Growth Authority. This paragraph shall not be construed to require a transfer of records prohibited under Michigan law.

9. The Director of the Department of Labor and Economic Growth, after consultation with the State Treasurer, shall provide executive direction and supervision for the implementation of the transfers under Section II.F.6. The functions assigned to the Michigan Economic Growth Authority under Section II.F.6 shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

10. The Michigan Economic Growth Authority, Director of the Department of Labor and Economic Growth, and the State Treasurer shall immediately initiate coordination to facilitate the transfers under Section II.F.6 and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Treasury.

11. The Michigan Economic Growth Authority shall administer any assigned functions under Section II.F.6 in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

G. Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority

1. The powers, duties, functions, and responsibilities of the Director of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 to 484.3120, are transferred

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without regard to the type of transfer to the Director of the Department of Labor and Economic Growth. Except as provided in Section II.G.6, the Director of the Department of Labor and Economic Growth may assign powers, duties, functions, and responsibilities transferred to the Director of the Department of Labor and Economic Growth under this paragraph to employees of the Department of Labor and Economic Growth and may designate an employee of the Department as the Executive Secretary of the Michigan Extension Telecommunications Rights-of-Way Oversight Authority. Employees of the Department of Labor and Economic Growth assigned functions under this paragraph shall not be designated as the authorized representative of the Director of the Department under Section II.H.3.

2. The position of Director of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority established under Section 3 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3103, and the requirement under the same provision of Michigan law that the Director of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority report directly to the Governor are abolished.

3. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority shall remain a separate authority established under Article VII, Section 27 of the Michigan Constitution of 1963.

4. All budget, procurement, and management-related functions of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority assigned to the Department of Consumer and Industry Services under Section 3 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3103, shall be performed by the Department of Labor and Economic Growth under the direction and supervision of the Director of the Department of Labor and Economic Growth. The Department of Labor and Economic Growth shall be the appointing authority for any civil service employees of the Authority.

5. The Department of Labor and Economic Growth shall provide the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority with suitable offices, facilities, equipment, staff, and supplies for the Authority, as required under Section 3 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3103.

6. As authorized by Section 3(5) of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3103(5), the Director of the Department of Labor and Economic Growth, on behalf of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority, may promulgate rules under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the implementation and administration of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 to 484.3120.

7. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Director of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority for the activities, powers, duties, functions, and responsibilities transferred by this Section II.G are transferred to the Department of Labor and Economic Growth.

8. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of the transfers under this Section II.G.

9. The Director of the Department of Labor and Economic Growth and the Director of the Michigan Telecommunications Rights-of-Way Oversight Authority shall immediately initiate coordination to facilitate the transfers under this Section II.G and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority.

10. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under this Section II.G in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

H. Michigan Broadband Development Authority

1. Any authority, powers, duties, functions, responsibilities, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Michigan Broadband Development Authority, including but not limited to those under the Michigan Broadband Development Authority Act, 2002 PA 49, MCL 484.3201 to 484.3225, are transferred by Type I Transfer from the Department of Treasury to the Department of Labor and Economic Growth.

2. The Michigan Broadband Development Authority shall exercise its prescribed powers, duties, functions, and responsibilities independently of the Director of the Department of Labor and Economic Growth. However, the budgeting, procurement, and related administrative or management functions of the Michigan Broadband Development Authority assigned to the State Treasurer under the Michigan Broadband

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Development Authority Act, 2002 PA 49, MCL 484.3205, are transferred to, and shall be performed under the direction and supervision of, the Director of the Department of Labor and Economic Growth. The Department of Labor and Economic Growth shall function as the appointing authority for any civil service employees of the Authority.

3. The position as a member of the Board of the Directors of the Michigan Broadband Authority designated for the President and Chief Executive Officer of the Michigan Economic Development Corporation under Section 6(2)(a) of the Michigan Broadband Development Authority Act, 2002 PA 49, MCL 484.3206(2)(a), is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

4. In the absence or incapacity of the President and Chief Executive Officer of the Michigan Broadband Development Authority, or in the event of a vacancy in the office of President and Chief Executive Officer of the Michigan Broadband Development Authority, the Vice President of the Michigan Broadband Development Authority may exercise all of the powers, duties, functions, and responsibilities of the President and Chief Executive Officer in a temporary capacity acting as President and Chief Executive Officer, including but not limited to any functions assigned to the President and Chief Executive Officer of the Michigan Broadband Development Authority under this Order.

5. The Type I Transfer of the Michigan Broadband Development Authority under this Section II.H includes but is not limited to bonds, notes, loans, grants, reserves, and trust funds, subject to any agreement with note and bond holders, borrowers, grant recipients, or contract holders.

6. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Treasury for the activities, powers, duties, functions, and responsibilities transferred by this Section II.H are transferred to the Department of Labor and Economic Growth.

7. The Director of the Department of Labor and Economic Growth, after consultation with the State Treasurer and the President and Chief Executive Officer of the Michigan Broadband Development Authority, shall provide executive direction and supervision for the implementation of the transfers. The functions assigned to the Department of Labor and Economic Growth shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

8. The Director of the Department of Labor and Economic Growth, the President and Chief Executive Officer of the Michigan Broadband Development Authority, and the State Treasurer shall immediately initiate coordination to facilitate the Type I Transfer under this Section II.H and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Broadband Development Authority.

9. The Director of the Department of Labor and Economic Growth shall administer any functions assigned to the Department of Labor and Economic Growth under this Section II.H in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

I. Michigan Economic Growth Authority

1. The position as a member of the Michigan Economic Growth Authority designated for the Director of the Michigan Jobs Commission or his or her authorized representative under Section 4(2)(a) of the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.804(2)(a), is transferred to the President and Chief Executive Officer of the Michigan Economic Development Corporation or his or her authorized representative. The President and Chief Executive Officer of the Michigan Economic Development Corporation or his or her authorized representative shall serve as a member of the Michigan Economic Growth Authority.

2. The position as a member of the Michigan Economic Growth Authority designated for the Director of the Department of Management and Budget or his or her authorized representative under Section 4(2)(c) of the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.804(2)(c), is transferred to the Director of the Department of Labor and Economic Growth or his or her authorized representative.

3. The position as Chairperson of the Michigan Economic Growth Authority designated for the Director of the Michigan Jobs Commission or his or her authorized representative under Section 4(2)(a) of the Michigan Economic Growth Authority Act, 1995 PA 24, MCL 207.804(2)(a), is transferred to the Director of the Department of Labor and Economic Growth or his or her authorized representative serving as a member of the Michigan Economic Growth Authority.

J. Michigan Next Energy Authority

1. Any authority, powers, duties, functions, responsibilities, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Michigan Next Energy Authority are transferred by Type I

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Transfer from the Department of Management and Budget to the Department of Labor and Economic Growth, including but not limited to those under all of the following:

a. The Michigan Next Energy Authority Act, 2002 PA 593, MCL 207.821 to 207.827.

b. Section 9i of The General Property Tax Act, 1893 PA 206, MCL 211.9i.

2. The Michigan Next Energy Authority shall exercise its prescribed powers, duties, functions, and responsibilities independently of the Director of the Department of Labor and Economic Growth. However, the budgeting, procurement, and related administrative or management functions of the Michigan Next Energy Authority assigned to the Director of the Department of Management and Budget under Section 3(2) of the Michigan Next Energy Authority Act, 2002 PA 593, MCL 207.823(2) shall be performed by the Director of the Department of Labor and Economic Growth. The Department of Labor and Economic Growth shall function as the appointing authority for any civil service employees of the Authority.

3. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Management and Budget for the activities, powers, duties, functions, and responsibilities transferred by this Section II.J are transferred to the Department of Labor and Economic Growth.

4. The Director of the Department of Labor and Economic Growth, after consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of the transfers. The functions assigned to the Department of Labor and Economic Growth shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

5. The Directors of the Department of Labor and Economic Growth and the Department of Management and Budget shall immediately initiate coordination to facilitate the Type I Transfer under this Section II.J and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Next Energy Authority.

6. The Director of the Department of Labor and Economic Growth and the Next Energy Authority shall administer any assigned functions under this Section II.J in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

K. Michigan Strategic Fund

1. The Michigan Strategic Fund is transferred by Type IV Transfer from the Department of Management and Budget to the Department of Labor and Economic Growth. The transfer under this Section II.K includes but is not limited to authority, powers, duties, functions, and responsibilities under all of the following:

a. The Michigan Strategic Fund Act, 1984 PA 270, MCL 125.2001 to 125.2093.

b. The Michigan Renaissance Zone Act, 1996 PA 376, MCL 125.2681 to 125.2696.

c. Section 9f of The General Property Tax Act, 1893 PA 206, MCL 211.9f.

2. All administrative or housekeeping functions including budgeting, procurement, personnel, and management-related functions of the Michigan Strategic Fund shall be performed under the direction and supervision of the President of the Michigan Strategic Fund. The President of the Michigan Strategic Fund shall be the appointing authority for the civil service employees of the Michigan Strategic Fund.

3. The board position designated in Section 2005(3) of the Michigan Strategic Fund Act, 1984 PA 270, MCL 125.2005(3), for the Director of the Department of Commerce, transferred under Executive Order 1994-26, MCL 408.48, to the Director of the Michigan Jobs Commission, and subsequently transferred under Executive Order 1999-1, MCL 408.40, to the Director of the Department of Management and Budget, is transferred to the Director of the Department of Labor and Economic Growth, or one authorized representative from the Department of Labor and Economic Growth or the Michigan Economic Development Corporation designated by the Director. If the Director designates an authorized representative under this paragraph, the authorized representative of the Director may serve as a member of the of the board of the Michigan Strategic Fund irrespective of whether the Director of the Department of Labor and Economic Growth is absent.

4. The position of President of the Michigan Strategic Fund designated for one of two members of the board of the Michigan Strategic Fund serving at the pleasure of the Governor under Section 2005(4) of the Michigan Strategic Fund Act, 1984 PA 270, MCL 125.2005(4), is transferred to the Director of the Department of Labor and Economic Growth or, if a representative is designated under Section II.K.3, to the authorized representative of the Director under Section II.K.3. The Director of the Department of Labor and Economic Growth, or, if a representative is designated under Section II.K.3, the authorized representative of the Director serving as a member of the board of the Michigan Strategic Fund under Section II.K.3, shall be the President of the Michigan Strategic Fund.

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5. The transfer of the Michigan Strategic Fund under this Section II.K includes but is not limited to bonds, notes, loans, grants, reserves, and trust funds, subject to any agreement with note and bond holders, borrowers, grant recipients, or contract holders.

6. Any records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Management and Budget for the activities, powers, duties, functions, and responsibilities transferred by this Section II.K are transferred to the Department of Labor and Economic Growth.

7. The Director of the Department of Labor and Economic Growth, after consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of the transfers. The functions assigned to the Department of Labor and Economic Growth shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

8. The Directors of the Department of Labor and Economic Growth and the Department of Management and Budget shall immediately initiate coordination to facilitate the transfers under this Section II.K and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Strategic Fund.

9. The Department of Labor and Economic Growth shall administer any functions assigned to the Department of Labor and Economic Growth under this Section II.K in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

L. Wage and Hour Division

1. The new Wage and Hour Division is created as a Type II Agency within the Department of Labor and Economic Growth. The new Wage and Hour Division shall be headed by a Wage and Hour Administrator.

2. Any authority, powers, functions, duties and responsibilities of the Former Wage and Hour Division of the Department of Consumer and Industry Services, transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, are transferred by Type II Transfer from the Bureau of Worker's and Unemployment Compensation to the new Wage and Hour Division within the Department of Labor and Economic Growth, including but not limited to any authority, powers, functions, duties, and responsibilities under each of the following:

a. The Minimum Wage Law of 1964, 1964 PA 154, MCL 408.381 to 408.398.

b. 1978 PA 390, MCL 408.471 to 408.490.

c. 1965 PA 166, MCL 408.551 to 408.558.

d. The Youth Employment Standards Act, 1978 PA 90, MCL 409.101 to 409.124.

3. The Director of the Department of Labor and Economic Growth shall immediately initiate coordination with the Bureau of Worker's and Unemployment Compensation to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the new Wage and Hour Division.

4. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, power, duties, functions, and responsibilities transferred under this Section II.L are transferred to the new Wage and Hour Division.

5. All rules, orders, contracts, and agreements relating to the functions transferred to the new Wage and Hour Division under this Order lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

M. Qualifications Advisory Committee

1. The new Qualifications Advisory Committee is established within the Workers' Compensation Agency. The new Qualifications Advisory Committee shall have all of the powers, duties, and functions assigned to the Qualifications Advisory Committee under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, including but not limited to those powers and duties under Sections 210, 212, and 274 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.210, 418.212, and 418.274.

2. The Qualifications Advisory Committee established under Section 209 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.209 is abolished.

3. Any and all statutory references to the Qualifications Advisory Committee not inconsistent with this Order shall be deemed references to the new Qualifications Advisory Committee created under this Section II.M.

4. The Governor shall appoint a 10-member new Qualifications Advisory Committee. The Committee shall consist of persons who have experience in the area of worker's compensation. Employer interests and

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employee interests shall be equally represented on the Committee. Members shall be appointed for terms of 4 years except as otherwise provided in this Order. Vacancies on the Committee shall be filled by the Governor so that employer and employee interests continue to be equally represented on the Committee and shall be for the remainder of the unexpired term.

5. Members of the Qualifications Advisory Committee abolished under this Order serving as a member of the Qualifications Advisory Committee on the day prior to the effective date of this Order shall serve as members of the new Qualifications Advisory Committee until the date on which their appointment as a member of the Qualifications Advisory Committee abolished under this Order would have expired. The Governor shall appoint an additional number of members to the new Qualifications Advisory Committee necessary to reach 10 members. Members appointed by the Governor under this Section II.M.4 shall be appointed to 4-year terms beginning on the effective date of this Order.

6. The Governor shall appoint a member of the new Qualifications Advisory Committee to serve as the Chairperson of the new QAC at the pleasure of the Governor.

7. A quorum of the new Qualifications Advisory Committee shall consist of 6 members of the new QAC appointed and serving. The business of the new QAC shall be conducted by not less than a quorum.

8. Members of the new Qualifications Advisory Committee shall serve without compensation but may be reimbursed for all necessary expenses in connection with the discharge of their official duties as members of the committee, subject to available appropriations.

9. Staff and offices shall be provided for the new Qualifications Advisory Committee by the Workers' Compensation Agency.

10. The Director of the Department of Labor and Economic Growth shall immediately initiate coordination with the Qualifications Advisory Committee to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Qualifications Advisory Committee.

11. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, power, duties, functions, and responsibilities transferred under this Section II.M are transferred to the new Qualifications Advisory Committee.

12. All rules, orders, contracts, and agreements relating to the functions transferred to the new Qualifications Advisory Committee by this Section II.M lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

N. Unemployment Insurance Agency

1. The Unemployment Insurance Agency is created as a Type II Agency within the Department of Labor and Economic Growth. The Unemployment Insurance Agency shall be headed by a Director of Unemployment Insurance.

2. Any authority, powers, functions, duties, and responsibilities of the Unemployment Agency transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order No. 2002-1, MCL 445.2004, are transferred from the Bureau of Worker's and Unemployment Compensation to the Unemployment Insurance Agency.

3. All of the statutory powers, functions, duties, and responsibilities of the Director of the former Unemployment Agency created in Section 5 of the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, MCL 421.5, defined as the Director of Employment Security in Executive Order 1997-12, MCL 421.94, and transferred to the Director of the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, are transferred from the Director of the Bureau of Worker's and Unemployment Compensation to the Director of Unemployment Insurance.

4. The Director of the Department of Labor and Economic Growth shall immediately initiate coordination with the Bureau of Worker's and Unemployment Compensation to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Unemployment Insurance Agency.

5. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, power, duties, functions, and responsibilities transferred under this Section II.N are transferred to the Unemployment Insurance Agency.

6. All rules, orders, contracts, and agreements relating to the functions transferred to the Unemployment Insurance Agency by this Section II.N lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

O. Workers' Compensation Agency

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1. The Workers' Compensation Agency is created as a Type II Agency within the Department of Labor and Economic Growth. The Workers' Compensation Agency shall be headed by a Director of Workers' Compensation.

2. Any authority, powers, functions, duties and responsibilities of the Bureau of Worker's Compensation transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, are transferred from the Bureau of Worker's and Unemployment Compensation to the Workers' Compensation Agency.

3. Any authority, powers, functions, duties, and responsibilities of the Director of the Bureau of Worker's Compensation established in Chapter 2 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.201 to 418.274, transferred to the Director of the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, are transferred from the Director of the Bureau of Worker's and Unemployment Compensation to the Director of Workers' Compensation.

4. The Worker's Compensation Board of Magistrates transferred to the Bureau of Worker's and Unemployment Compensation under Executive Order 2002-1, MCL 445.2004, shall be located within the Workers' Compensation Agency, but shall continue as an autonomous agency within the Department of Labor and Economic Growth.

5. All authority, powers, functions, duties, and responsibilities of the Assistant to the Director of the Bureau of Worker's Compensation with charge of an office under the fourth sentence of Section 205 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.205, are transferred by Type III Transfer to the Director of Workers' Compensation. The position of Assistant to the Director of the Bureau of Worker's Compensation with charge of an office under the fourth sentence of Section 205 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.205, is abolished.

6. Any remaining authority, powers, functions, duties, and responsibilities of the Bureau of Worker's and Unemployment Compensation or the Director of the Bureau of Worker's and Unemployment Compensation not otherwise transferred under this Order are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth.

7. The Bureau of Worker's and Unemployment Compensation and the position of Director of the Bureau of Worker's and Unemployment Compensation created under Executive Order 2002-1, MCL 445.2004, are abolished.

8. The Director of the Department of Labor and Economic Growth shall immediately initiate coordination with the Bureau of Worker's and Unemployment Compensation to facilitate the transfers and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Workers' Compensation Agency.

9. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, power, duties, functions, and responsibilities transferred under this Section II.O are transferred to the Workers' Compensation Agency, except as provided in Section II.O.6.

10. All rules, orders, contracts, and agreements relating to the functions transferred to the Workers' Compensation Agency under this Order lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

P. Workers' Compensation Appellate Commission

1. Upon the appointment of 5 Appellate Commissioners under Section II.P.4, all authority, powers, duties, functions, and responsibilities of the Former Worker's Compensation Appellate Commission and the Chairperson of the Former Worker's Compensation Appellate Commission, including but not limited to authority, powers, duties, functions, and responsibilities under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, are transferred to the new Workers' Compensation Appellate Commission created under this Section II.P, and the Former Worker's Compensation Appellate Commission is abolished. Any and all statutory references to the Former Worker's Compensation Appellate Commission not inconsistent with this Order shall be deemed references to the new Workers' Compensation Appellate Commission created under this Section II.P.

2. The new Workers' Compensation Appellate Commission is established as a Type I Agency within the Department of Labor and Economic Growth and shall perform its appellate functions independently and autonomously. However, the budgeting, procurement, and related administrative or management functions of the new Workers' Compensation Appellate Commission shall be performed by the Department of Labor and Economic Growth.

3. The new Workers' Compensation Appellate Commission has the power and authority to review the orders of the Director of Workers' Compensation and the orders and opinions issued by members of the Worker's Compensation Board of Magistrates as provided under the Worker's Disability Compensation Act

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of 1969, 1969 PA 317, MCL 418.101 to 418.941. The new Workers' Compensation Appellate Commission may promulgate rules on administrative appellate procedure for purposes under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

4. The new Workers' Compensation Appellate Commission shall consist of 5 members appointed by the Governor with the advice and consent of the Senate. Only a person deemed suitable for appointment under Section II.P.6 is eligible for appointment as an Appellate Commissioner. Not later than January 30, 2004, the Governor shall appoint the initial 5 members of the new Workers' Compensation Appellate Commission. Of the 5 members initially appointed, 2 members shall be appointed for a term expiring on September 30, 2005, 2 members shall be appointed for a term expiring on September 30, 2006, and 1 member shall be appointed for a term expiring on September 30, 2007.

5. Except as provided in Section II.P.4, Appellate Commissioners shall be appointed for terms of 4 years. An Appellate Commissioner may be reappointed but an Appellate Commissioner that has served as a member of the Former Worker's Compensation Appellate Commission or the new Workers' Compensation Appellate Commission for a combined total of 12 years or more shall not be appointed to a new term. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. An Appellate Commissioner appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term.

6. To be eligible for appointment as an Appellate Commissioner a person shall be a member in good standing of the State Bar of Michigan, successfully complete an interview with the new Qualifications Advisory Committee, and satisfy either of the following:

a. Document to the satisfaction of the new Qualifications Advisory Committee legal experience in the field of worker's compensation of not less than 5 years. To meet this requirement, a person must document to the new QAC a period of time totaling at least 5 years during which the person met at least one of the following criteria:

i. A significant portion of the applicant's personal practice has been in active worker's compensation trial practice representing claimants or employers.

ii. A significant portion of the applicant's personal practice has been in active worker's compensation appellate practice representing claimants or employers.

iii. Service as a member of the Board of Magistrates, the former worker's compensation appeals board provided for under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the Former Worker's Compensation Appellate Commission, or the new Workers' Compensation Appellate Commission.

b. Successfully complete a written examination developed by the new Qualifications Advisory Committee and administered to applicants for the position of Worker's Compensation Appellate Commissioner in order to determine the person's ability and knowledge with regard to worker's compensation in the following areas:

i. Knowledge of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

ii. Skill with regard to fact finding.

iii. The Michigan Rules of Evidence.

iv. A basic understanding of human anatomy and physiology.

7. After completing personal interviews of persons applying for appointment as an Appellate Commissioner, the new Qualifications Advisory Committee shall determine the applicants the new QAC considers qualified for the position of Appellate Commissioner, prepare a list of qualified applicants, and regularly update and forward the list and any updates in writing to the Governor. A person determined to be qualified for the position of member of the Worker's Compensation Board of Magistrates prior to the effective date of this Order shall be considered qualified for appointment as an Appellate Commissioner after the effective date of this Order. Personal interviews by the new QAC shall be used to determine a person's suitability for the position of Appellate Commissioner, especially with regard to his or her objectivity.

8. The Governor shall designate a member of the new Workers' Compensation Appellate Commission as its Chairperson, to serve as Chairperson at the pleasure of the Governor. The Chairperson shall have general supervisory control of and be in charge of the assignment and scheduling of the work of the new Workers' Compensation Appellate Commission. The Chairperson may also establish productivity standards that are to be adhered to by the new Workers' Compensation Appellate Commission, its members, and its panels. Each Appellate Commissioner shall devote full time to the functions of the new Workers' Compensation Appellate Commission and shall perform the functions of the office during the hours generally worked by officers and employees of the executive departments of this state.

9. In the event of an extended leave of absence or disability of an Appellate Commissioner, the Chairperson of the new Workers' Compensation Appellate Commission may select temporary Appellate

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Commissioners to serve for not more than 6 months in any 2-year period from a list maintained by the new Qualifications Advisory Committee. The list shall be composed of persons who are members of the State Bar of Michigan in good standing and who are former or retired members of the Former Worker's Compensation Appellate Commission, the new Workers' Compensation Appellate Commission, the former worker's compensation appeals board established under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, or the Worker's Compensation Board of Magistrates. A temporary Appellate Commissioner selected by the Chairperson of the new Workers' Compensation Appellate Commission shall have the same powers, duties, and responsibilities, as an appointed Appellate Commissioner.

10. Except as otherwise provided in Section II.P.11, matters for review by the Commission shall be randomly assigned to a panel of 3 Appellate Commissioners for disposition. The Chairperson of the Commission may reassign a matter in order to ensure timely review and decision of the matter. The decision reached by a majority of the randomly assigned 3-member panel shall be the decision of the new Workers' Compensation Appellate Commission.

11. Any matter for review by the new Workers' Compensation Appellate Commission that may establish a precedent with regard to worker's compensation in this state as determined by the Chairperson of the new Workers' Compensation Appellate Commission, or any matter that 2 or more members of the commission request be reviewed by the entire Commission, shall be reviewed and decided by the entire Commission.

12. The new Qualifications Advisory Committee shall evaluate the performance of each Appellate Commissioner at least once every 2 years. The evaluation shall be based upon at least the following criteria:

a. Productivity including reasonable time deadlines for disposing of cases.

b. Manner in conducting any hearings.

c. Knowledge of rules of evidence as demonstrated by transcripts of proceedings in which the Appellate Commissioner participated as an Appellate Commissioner.

d. Knowledge of the law.

e. Evidence of any demonstrable bias against particular defendants, claimants, or attorneys.

f. Written surveys or comments of all interested parties. To the extent authorized by Michigan law, information obtained by the new Qualifications Advisory Committee under this paragraph is exempt from disclosure under the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, in the same manner that information provided to the Qualifications Advisory Committee under Section 212(1)(g) of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.212(1)(g), is exempt from disclosure.

13. After completing an evaluation under Section II.P.12, the new Qualifications Advisory Committee shall submit a written report, including any supporting documentation to the Governor regarding that evaluation, which may include but not be limited to recommendations with regard to 1 or more of the following:

a. Promotion.

b. Suspension.

c. Removal.

d. Additional training or education.

The Governor will respond in writing to the new Qualifications Advisory Committee regarding any action taken in response to a report of the new Qualifications Advisory Committee.

14. An Appellate Commissioner may be removed by the Governor for good cause, explained in writing. Good cause for removal shall include, but not be limited to, recommendation for removal by the new Qualifications Advisory Committee under Section II.P.13, lack of productivity, or other neglect of duties.

15. The Chairperson of the new Workers' Compensation Appellate Commission in cooperation with the Chairperson of the Worker's Compensation Board of Magistrates shall consult with Michigan law schools and universities, the State Bar of Michigan, and other legal associations for the purpose of establishing introductory and continuing legal education courses in worker's compensation. Appellate Commissioners, as a condition of continued employment, may be required by the new Qualifications Advisory Committee to attend the courses. Applicants for the position of Appellate Commissioner may also be required to attend the courses in order to be deemed by the new Qualifications Advisory Committee as eligible for appointment as an Appellate Commissioner.

16. The new Workers' Compensation Appellate Commission and its Chairperson shall provide information requested by the new Qualifications Advisory Committee necessary for the performance of the duties of the new Qualifications Advisory Committee under the Worker's Disability and Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and this Order.

17. The Department of Labor and Economic Growth shall provide suitable office space for the new Workers' Compensation Appellate Commission and its functions.

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18. The Department of Labor and Economic Growth shall provide the new Workers' Compensation Appellate Commission the staff necessary for the Commission to perform its duties under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and this Order, which may include legal assistants for the purpose of legal research and otherwise assisting the Commission and the Appellate Commissioners.

19. Opinions issued by the new Workers' Compensation Appellate Commission shall be in writing and shall clearly define the legal principles being applied. The Commission shall provide for the public distribution of its opinions, including but not limited to distribution by electronic means such as the Internet.

20. By January 30, 2005, and each following January 30th, the new Qualifications Advisory Committee shall review the productivity and caseload of the new Workers' Compensation Appellate Commission, and shall recommend to the Governor in writing any reduction or increase in the number of Appellate Commissioners necessary in the opinion of the Qualifications Advisory Committee.

21. The Director of the Department of Labor and Economic Growth and the Chairperson of the Former Worker's Compensation Appellate Commission shall immediately initiate coordination to facilitate the transfers under this Section II.P, and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Former Worker's Compensation Appellate Commission.

22. All records, personnel, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available for the activities, powers, duties, functions, and responsibilities transferred under Sections II.P of this Order are transferred to the new Workers' Compensation Appellate Commission.

23. All rules, orders, opinions, contracts, and agreements relating to the functions of the Former Worker's Compensation Appellate Commission transferred to the new Workers' Compensation Appellate Commission under this Order lawfully adopted prior to the issuance of this Order shall continue to be effective until revised, amended, or rescinded.

24. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Former Worker's Compensation Appellate Commission for the activities, powers, duties, functions, and responsibilities transferred under this Section II.P are transferred to the new Workers' Compensation Appellate Commission.

Q. Worker's Compensation Board of Magistrates

1. The number of members constituting the Worker's Compensation Board of Magistrates established under Section 213 of the Worker's Disability and Compensation Act of 1969, 1969 PA 317, MCL 418.213, is reduced from 30 members to 26 members. The Governor shall designate one of the 26 members of the Board of Magistrates as the Chairperson of the Worker's Compensation Board of Magistrates, who shall serve as Chairperson of the Board of Magistrates at the pleasure of the Governor.

2. The Board of Magistrates and its Chairperson shall provide information requested by the new Qualifications Advisory Committee necessary to the performance of the duties of the new Qualifications Advisory Committee under the Worker's Disability and Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

3. By January 30, 2005, and each following January 30th, the new Qualifications Advisory Committee shall review the productivity and caseload of the Board of Magistrates, and shall recommend to the Governor in writing any reduction or increase in the number of members of the Board of Magistrates necessary in the opinion of the Qualifications Advisory Committee.

4. The Department of Labor and Economic Growth shall provide the Worker's Compensation Board of Magistrates the staff necessary for the Board of Magistrates to perform its duties under the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941, or this Order, which may include legal assistants for the purpose of legal research and otherwise assisting the Board of Magistrates and its members.

5. The Department of Labor and Economic Growth shall provide suitable office space for the Board of Magistrates and its functions.

III. DEPARTMENT OF CAREER DEVELOPMENT

A. Except as otherwise provided in this Section III, all authority, power, duties, functions, and responsibilities of the Department of Career Development, including but not limited to, any board, commission, council, or similar entity within the Department of Career Development, are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth, including but not limited to all of the following:

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1. Any authority, powers, duties, functions, and responsibilities of the Governor's Workforce Commission, created under Section VII of Executive Order 1994-26, MCL 408.48. The position on the Governor's Workforce Commission designated for the Director of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, subsequently transferred to the Director of the Department of Career Development under Executive Order 1999-1, MCL 408.40, is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

2. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development for Michigan Rehabilitative Services, pursuant to Executive Order 1999-1, MCL 408.40; the Rehabilitation Act of 1964, 1964 PA 232, MCL 395.81 to 395.90; 1952 PA 111, MCL 395.151 to 395.152; the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.101 to 418.941; and the federal Rehabilitation Act of 1973, 29 USC 701 to 796*l*, transferred to the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

3. Any authority, powers, duties, functions, and responsibilities of the Michigan Rehabilitation Advisory Council established within the Department of the Michigan Jobs Commission under Executive Order 1994-20 and then transferred to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

4. Any authority, powers, duties, functions, and responsibilities of the Federal JOBS Program, Work First and Grant Diversion programs, transferred to the Department of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

5. Any authority, powers, duties, functions, and responsibilities of the Michigan Community Service Commission, pursuant to 1994 PA 219, MCL 408.221 to 208.232, and Executive Order 1999-1, MCL 408.40.

6. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Governor's Office for Job Training, transferred to the Department of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred by Type III Transfer to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

7. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Displaced Homemaker Program transferred to the Department of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred by Type III Transfer to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

8. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Michigan Occupational Information Coordinating Committee, transferred to the Department of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred by Type III Transfer to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

9. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Michigan Transition Initiative, including the functions of budgeting, procurement and management-related functions, transferred to the Department of the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred by Type III Transfer to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

10. Any authority, powers, duties, functions, and responsibilities of the Michigan Occupational Information System transferred to the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and transferred to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

11. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Department of Corrections Job Training Programs transferred to the Michigan Jobs Commission under Executive Order 1994-26, MCL 408.48, and then transferred by Type III Transfer to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

12. Any authority, powers, duties, functions, and responsibilities of the Employment Service Agency not transferred to the Michigan Strategic Fund under Section III.A.6 of Executive Order 1999-1, MCL 408.40, established pursuant to the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, and transferred to the Department of Career Development under Executive Order 1999-1, MCL 408.40.

13. Any authority, powers, duties, functions, and responsibilities of the Superintendent of Public Instruction to administer Adult Education Services transferred to the Department of Career Development

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under Executive Order 1999-12, MCL 388.995, including all of the following:

a. Section 1 of 1946 (1st Ex Sess) PA 18, MCL 388.531, regarding adult education programs by counties, except any policy-making authority retained by the State Board of Education.

b. Section 2 of 1946 (1st Ex Sess) PA 18, MCL 388.532, regarding training and approval of adult education instructors, except any policy-making authority retained by the State Board of Education.

14. Any authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the authority, powers, duties, functions, and responsibilities of the State Board of Education under federal law regarding vocational education, transferred to the Department of Career Development under Executive Order 1999-12, MCL 388.995, except any authority, powers, duties, functions and responsibilities transferred to the State Administrative Board under Executive Order 2000-12, MCL 17.61, including but not limited to all of the following:

a. The School to Work Opportunities Act of 1994, 20 USC 6101 to 6251, or any successor statute, except any policy-making authority retained by the State Board of Education.

b. The Job Training Partnership Act, 29 USC 1501 to 1792b, or any successor statute, except any policy-making authority retained by the State Board of Education.

15. Any authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the authority, powers, duties, functions, and responsibilities of the State Board of Education or Superintendent of Public Instruction, as applicable, regarding postsecondary services transferred to the Department of Career Development under Executive Order 1999-12, MCL 388.995, except any authority, powers, duties, functions and responsibilities transferred to the State Administrative Board under Executive Order 2000-12, MCL 17.61, including but not limited to all of the following:

a. Sections 1 to 3 of 1943 PA 148, MCL 395.101 to 395.103, regarding proprietary schools, except any policy-making authority retained by the State Board of Education.

b. Sections 1 to 5 of 1963 PA 40, MCL 395.121 to 395.125, regarding private trade schools or business schools, except any policy-making authority retained by the State Board of Education.

c. Sections 170 to 177 of the Michigan General Corporation Act, 1931 PA 327, MCL 450.170 to 177, and Section 10(c) of 1964 PA 287, MCL 388.1010(c), regarding educational corporations and foundations, except any policy-making authority retained by the State Board of Education.

d. Section 3 of the Revised School Code, 1976 PA 451, MCL 380.3, regarding the designation of service area boundaries for area vocational-technical programs, except any policy-making authority retained by the State Board of Education.

e. Section 105(4) of the Community Colleges Act of 1966, 1966 PA 331, MCL 389.105(4), regarding the designation of territory outside of a community college district to become part of its vocational-technical service area, except any policy-making authority retained by the State Board of Education.

f. Section 123(b) of the Community Colleges Act of 1966, 1966 PA 331, MCL 389.123(b), regarding the approval of tuition waivers in exchange for educational services rendered to community colleges, except any policy-making authority retained by the State Board of Education.

g. Section 124(a) of the Community Colleges Act of 1966, 1966 PA 331, MCL 389.124(a), regarding the education reports for a community college, except any policy-making authority retained by the State Board of Education.

h. Section 143 of the Community Colleges Act of 1966, 1966 PA 331, MCL 389.143, regarding the approval of the community college accounting system, the filing of audits, and the inspection of books, except any policy-making authority retained by the State Board of Education.

i. Section 2(d) of the Higher Education Loan Authority Act, 1975 PA 222, MCL 390.1152(d), regarding the designation of vocational schools eligible to receive student loans, except any policy-making authority retained by the State Board of Education.

j. Section 3(d) of 1986 PA 102, MCL 390.1283(d), regarding the designation of eligible postsecondary institutions for participation in the part-time, Independent Student Grant Program, except any policy-making authority retained by the State Board of Education.

k. Section 3 of 1986 PA 303, MCL 390.1323, regarding the designation of graduate and professional schools eligible to participate in the Michigan Graduate Work-Study Program, except any policy-making authority retained by the State Board of Education.

l. Section 3 of 1986 PA 288, MCL 390.1373, regarding the designation of postsecondary schools eligible for the Michigan Work Study Program, except any policy-making authority retained by the State Board of Education.

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m. Section 3 of 1986 PA 273, MCL 390.1403, regarding the designation of postsecondary schools eligible for the Michigan Educational Opportunity Grant Program, except any policy-making authority retained by the State Board of Education.

n. 1964 PA 28, MCL 395.21; Sections 1 to 4 of 1964 PA 44, MCL 395.31 to 395.34; and Sections 1 to 10 of 1919 PA 149, MCL 395.1 to 395.10, regarding the transfer of authority of the abolished State Board of Control for Vocational Education, that includes the authority to accept and disburse federal funds for specific federal grant programs, including federal funds for vocational education under 20 USC 2301 to 2415, except any policy-making authority retained by the State Board of Education.

o. Administration of the Carl D. Perkins Vocational and Applied Technology Education Act, 20 USC 2301 et seq.

p. Administration of the King-Chavez-Parks Initiative, currently authorized in Sections 317, 318, and 321 of 2003 PA 169 and under Sections 118 and 501 to 507 of 2003 PA 144.

16. Any rule-making authority, powers, duties, functions, and responsibilities of the State Board of Education or the Superintendent of Public Instruction, as applicable, transferred to the Department of Career Development under Executive Order No. 1999-12, MCL 388.995, including but not limited to all of the following:

a. Section 61a of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1661a, regarding administrative rules relating to vocational education consortiums for state aid purposes, except any policy-making authority retained by the State Board of Education.

17. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the authority, powers, duties, functions, and responsibilities under 1979 AC, R 395.231 to 395.362; 1988 AACS, R 395.371; 1979 AC, R 395.372 to 395.375; and 1988 AACS, R 395.376, regarding reimbursed programs of vocational-technical education, except any authority, powers, duties, functions and responsibilities transferred to the State Administrative Board under Executive Order 2000-12, MCL 17.61, and any policy-making authority retained by the State Board of Education.

18. Any authority, powers, duties, functions, and responsibilities of the Superintendent of Public Instruction regarding the administration of career preparation programs transferred to the Department of Career Development under Executive Order 1999-12, MCL 388.995, including under Sections 67 and 68 of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1667 and 388.1668, regarding the Advanced Career Academy and Michigan Career Preparation System grants, except any policy-making authority retained by the State Board of Education.

19. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development under Section 38e of the Single Business Tax Act, 1975 PA 228, MCL 208.38e, regarding the apprenticeship tax credit.

20. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development under Section 107 of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1707, regarding allocation for adult education programs.

21. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development under Section 108 of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1708, regarding adult learning programs.

22. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development under the Career and Technical Preparation Act, 2000 PA 258, MCL 388.1901 to 388.1913.

23. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development to conduct with the Family Independence Agency joint orientation sessions for Family Independence Agency assistance applicants under Section 57d of The Social Welfare Act, 1939 PA 280, MCL 400.57d.

24. Any authority, powers, duties, functions, and responsibilities of the Department of Career Development under Section 57f of The Social Welfare Act, 1939 PA 280, MCL 400.57f, regarding the Work First Program.

25. All other authority, powers, duties, functions, and responsibilities of the Department of Career Development, including but not limited to the functions of budgeting, procurement, and management.

B. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Council on Technical Excellence, created under Executive Order 2000-7, MCL 408.213 are transferred by Type III transfer to the Director of the Department of Labor and Economic Growth. The Council on Technical Excellence is abolished.

C. The Commission on Spanish-Speaking Affairs created under Section 2 of 1975 PA 164, MCL 18.302, transferred to the Director of the Department of Civil Rights under Executive Order 1991-29, MCL 37.111, and then transferred to the Department of Career Development under Executive Order 2000-5, MCL 18.311,

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is transferred by Type I Transfer to the Director of the Department of Labor and Economic Growth. The authority, powers, duties, functions, and responsibilities of the Department of Career Development relating to the Commission on Spanish-Speaking Affairs are transferred by Type II transfer to the Department of Labor and Economic Growth.

D. Any authority, powers, duties, functions, and responsibilities of the Michigan Workforce Investment Board created within the Department of Career Development under Executive Order 2002-5, MCL 408.101, is transferred by Type I Transfer to the Department of Labor and Economic Growth. The authority, powers, duties, functions, and responsibilities of the Department of Career Development relating to the Michigan Workforce Investment Board are transferred to the Department of Labor and Economic Growth.

E. Any authority, powers, duties, functions, and responsibilities of the Director of the Department of Career Development are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth, or his or her authorized representative, as applicable, including but not limited to all of the following:

1. Any remaining authority, powers, duties, functions, and responsibilities vested in the Department of Career Development or the Director of the Department Career Development relating to the Interagency Council on Spanish-Speaking Affairs under 1975 PA 164, MCL 18.301 to 18.308, transferred to the Director of the Department of Career Development by Type III Transfer under Executive Order 2000-5, MCL 18.311. Section 2 of Executive Order 2000-5, MCL 18.311, is rescinded and the Interagency Council on Spanish-Speaking Affairs is restored. The restored Interagency Council on Spanish-Speaking Affairs shall consist of all of the following members:

a. The Director of the Department of Agriculture or his or her authorized representative.

b. The Director of the Department of Civil Rights or his or her authorized representative.

c. The Director of the Department of Civil Service or his or her authorized representative.

d. The Director of the Department of Community Health or his or her authorized representative.

e. The Director of the Department of Corrections or his or her authorized representative.

f. The Director of the Department of Environmental Quality or his or her authorized representative.

g. The Director of the Family Independence Agency or his or her authorized representative.

h. The Director of the Department of Information Technology or his or her authorized representative.

i. The Director of the Department of Labor and Economic Growth or his or her authorized representative.

j. The Director of the Department of Management and Budget or his or her authorized representative.

k. The Director of the Department of Natural Resources or his or her authorized representative.

l. The State Treasurer or his or her authorized representative.

m. The Superintendent of Public Instruction or his or her authorized representative.

n. The Attorney General or his or her authorized representative.

o. The Secretary of State or his or her authorized representative.

p. The Executive Director of the Women's Commission or his or her authorized representative.

q. The President and Chief Executive Officer of the Michigan Economic Development Corporation or his or her authorized representative.

r. The Executive Director of the Michigan State Housing Development Authority or his or her authorized representative.

2. Any authority, powers, duties, functions, and responsibilities of the Director of the Department of Career Development under Section 353 of the Management and Budget Act, 1984 PA 431, MCL 18.1353, regarding certification of the seasonally adjusted state unemployment rate.

3. Any authority, powers, duties, functions, and responsibilities of the Director of the Department of Career Development, or his or her authorized representative, under the Career Development and Distance Learning Act, 2002 PA 36, MCL 390.1571 to 390.1579.

F. Any authority powers, duties, functions, and responsibilities related to the promulgation of rules by the Department of Career Development and any board, commission, council, or other similar entity within the Department of Career Development are transferred by Type II Transfer to the Director of the Department of Labor and Economic Growth.

G. The position on the Center for Educational Performance and Information Advisory Committee designated for a representative of the Department of Career Development under Section 94a of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1694a, is transferred the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

H. The position on the Michigan Merit Award Board designated for the Director of the Department of Career Development under Section 4 of the Michigan Merit Award Act, 1999 PA 94, MCL 390.1454, is transferred to the Director of the Department of Labor and Economic Growth, or his or her authorized representative.

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I. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Career Development for the activities, powers, duties, functions, and responsibilities transferred by this Section III are transferred to the Department of Labor and Economic Growth.

J. The Director of the Department of Labor and Economic Growth, after consultation with the Acting Director of the Department of Career Development, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Labor and Economic Growth.

K. The Acting Director of the Department of Career Development and the Director of the Department of Labor and Economic Growth shall immediately initiate coordination to facilitate the transfers under this Section III and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Career Development.

L. The Director of the Department of Labor and Economic Growth shall administer any assigned functions under this Section III in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

M. The Department of Career Development is abolished.

IV. DEPARTMENT OF COMMUNITY HEALTH

A. Bureau of Health Services

1. Any authority, powers, duties, functions, and responsibilities of the Bureau of Health Services of the Department of Consumer and Industry Services, its Licensing Division, the Compliant and Allegation Division, the Health Professional Recovery Program, and any board, commission, council, or similar entity within the Bureau of Health Services, including but not limited to any regulation by the Bureau of Health Services of health professionals in Michigan licensed, registered, or certified under Articles 7, 15 and 17 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7101 to 333.7545, 333.16101 to 333.18838, and 333.20101 to 333.22260, are transferred by Type II Transfer from the Department of Consumer and Industry Services to the Department of Community Health, except that any licensing council, board, or task force shall retain all of its statutory authority, powers, duties, functions, and responsibilities in the same manner as health-related councils, boards, and task forces transferred to the Department of Commerce under Executive Order 1991-9, MCL 338.3501.

2. Any authority, powers, duties, functions, and responsibilities of management support within the Department of Consumer and Industry Services for programs or functions within the Bureau of Health Services being transferred to the Department of Community Health are transferred by Type II Transfer from the Department of Consumer and Industry Services to the Director of the Department of Community Health, except that any licensing councils, boards, and task forces shall retain all of their statutory authority, powers, duties, functions, and responsibilities in the same manner as health-related councils boards and task forces transferred to the Department of Commerce under Executive Order 1991-9, MCL 338.3501.

3. The Directors of the Departments of Community Health and Labor and Economic Growth shall negotiate regarding the transfer of the support and personnel for the programs being transferred from the Bureau of Health Services to the Department of Community Health such that the transfers occur in the most efficient manner possible.

4. Any authority powers, duties, functions, and responsibilities related to the promulgation of rules by the Department of Consumer and Industry Services related to the Bureau of Health Services and any board, commission, council, or other similar entity within the Bureau of Health Services are transferred to the Director of the Department of Community Health, except that any licensing council, board, or task force shall retain all of its statutory authority, powers, duties, functions, and responsibilities in the same manner as health-related councils, boards, and task forces transferred to the Department of Commerce under Executive Order 1991-9, MCL 338.3501..

5. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Bureau of Health Services for the activities, powers, duties, functions, and responsibilities transferred by this Section IV.A are transferred to the Department of Community Health.

B. Bureau of Health Systems

1. Any authority, powers, duties, functions, and responsibilities of the Bureau of Health Systems of the Department of Consumer and Industry Services, including but not limited to the Division of Health and Facilities Services, the Division of Licensing and Certification, the Division of Nursing Home Monitoring, the

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Division of Operations, and any board, commission, council, or similar entity within the Bureau of Health Systems are transferred by Type II Transfer from the Department of Consumer and Industry Services to the Director of the Department of Community Health.

2. Any authority, powers, duties, functions, and responsibilities of management support within the Department of Consumer and Industry Services for programs or functions within the Bureau of Health Systems being transferred to the Department of Community Health are transferred by Type II Transfer from the Department of Consumer and Industry Services to the Director of the Department of Community Health.

3. The transfer under this Section IV.B includes but is not limited to authority, powers, duties, functions, and responsibilities of the Bureau of Health Systems under all of the following:

a. Any authority, powers, duties, functions, and responsibilities of the Bureau of Health Systems under Parts 201, 205, 208, 214, 215 and 217 of the Public Health Code, 1978 PA 368, MCL 333.20101 to 333.20211, 333.20501 to 333.20554, 333.20801 to 333.20821, 333.21401 to 333.21568, and 333.21701 to 333.21799e. The transfer under this paragraph includes only the authority, powers, duties, functions, and responsibilities of the Bureau of Health Systems under Part 213 of the Public Health Code, 1978 PA 368, MCL 333.21301 to 31333, not transferred to the Family Independence Agency under Section VII.

b. Titles XVIII and XIX of the federal Social Security Act of 1965 and the federal Clinical Laboratory Improvement Act Amendments of 1988.

c. The authority, powers, duties, functions, and responsibilities of the Division of Federal Support Services.

d. Any authority, powers, duties, functions, and responsibilities of the Bureau of Health Systems related to the Division of Emergency Medical Services under Part 209 of the Public Health Code, 1978 PA 368, MCL 333.20901 to 333.20979.

4. The Directors of the Departments of Community Health and Labor and Economic Growth shall negotiate regarding the transfer of the support and personnel for the programs being transferred from the Bureau of Health Systems to the Department of Community Health such that the transfers occur in the most efficient manner possible.

5. Any authority powers, duties, functions, and responsibilities related to the promulgation of rules by the Department of Consumer and Industry Services related to the Bureau of Health Systems and any board, commission, council, or other similar entity within the Bureau of Health Systems are transferred to the Director of the Department of Community Health.

6. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Bureau of Health Systems for the activities, powers, duties, functions, and responsibilities transferred by this Section IV.B are transferred to the Department of Community Health.

C. Controlled Substances Advisory Commission

1. The Controlled Substances Advisory Commission created under Section 7111 of the Public Health Code, 1978 PA 368, MCL 333.7111, is transferred by Type II Transfer to the Department of Community Health.

D. Advisory Committee on Pain and Symptom Management

1. The Advisory Committee on Pain and Symptom Management created under Section 16204a of the Public Health Code, 1978 PA 368, MCL 333.16204a, is transferred by Type II Transfer to the Department of Community Health.

2. The position as member and Chairperson of the Advisory Committee on Pain and Symptom Management designated under Section 16204a(1)(k) of the Public Health Code, 1978 PA 368, MCL 333.16204a(1)(k), for the Director of the Department of Consumer and Industry Services, or his or her authorized representative, is transferred to the Director of Community Health or his or her authorized representative.

3. The position as member of the Advisory Committee on Pain and Symptom Management designated under Section 16204a(1)(*l*) of the Public Health Code, 1978 PA 368, MCL 333.16204a(1)(*l*), for the Director of the Department of Community Health, or his or her authorized representative, is transferred to an authorized representative of the Director of the Department of Community Health.

4. Per diem compensation for members of the Advisory Committee on Pain and Symptom Management provided under Section 16204a(2) of the Public Health Code, 1978 PA 368, MCL 333.16204a(2), is subject to available appropriations.

5. The requirement under Section 16204a(4)(f) of the Public Health Code, 1978 PA 368, MCL 333.16204a(4)(f), that the Advisory Committee on Pain and Symptom Management annually report to the Department of Consumer and Industry Services is abolished, but the requirement to annually report to the Director of the Department of Community Health continues.

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6. The responsibilities of the Department of Consumer Industry Services related to the development, publication, and distribution of an informational booklet on pain under Section 16204d of the Public Health Code, 1978 PA 368, MCL 333.16204d, are transferred by Type II Transfer to the Director of the Department of Community Health.

E. Implementation of Transfers to Department of Community Health

1. The Director of the Department of Community Health, after consultation with the Director of the Department of Consumer and Industry Services, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Community Health.

2. The Directors of the Departments of Community Health and Labor and Economic Growth shall immediately initiate coordination to facilitate the transfers under this Section IV and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Community Health.

3. The Director of the Department of Community Health shall administer any assigned functions under this Section IV in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

V. DEPARTMENT OF ENVIRONMENTAL QUALITY

Brownfield Redevelopment Board

A. The position on the Brownfield Redevelopment Board created under Section 20104a of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20104a, designated for the Chief Executive Officer of the Michigan Jobs Commission or his or her designee is transferred to the Director of the Department of Labor and Economic Growth or his or her authorized representative.

B. The Director of the Department of Labor and Economic Growth, or the authorized representative of the Director serving as a member of the Brownfield Development Board under Section V.A, shall serve as the Chairperson of the Brownfield Redevelopment Board.

VI. DEPARTMENT OF TRANSPORTATION

A. Detroit People Mover Oversight

1. Any authority, powers, duties, and functions of the Department of Consumer and Industry Services under Section 5330 of the Federal Transit Act, 49 USC 5330, related to required oversight of the safety and security of the Detroit People Mover are transferred by Type II Transfer to the Director of the Department of Transportation.

2. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Labor and Economic Growth for the activities, powers, duties, functions, and responsibilities transferred by this Section VI are transferred to the Department of Transportation.

3. The Director of the Department of Transportation, in cooperation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Transportation.

4. The Directors of the Department of Transportation and the Department of Labor and Economic Growth shall immediately initiate coordination to facilitate the Type II Transfer under this Section VI and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Transportation.

5. The Director of the Department of Transportation shall administer any assigned functions under this Section VI in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of the Department of Transportation shall notify the United States Secretary of Transportation of the transfers under this Section VI pursuant to federal law.

B. Trolley Line Service Oversight

1. Any authority, powers, duties, and functions of the Department of Consumer and Industry Services under Section 5330 of the Federal Transit Act, 49 USC 5330, relating to trolley line service oversight, are transferred by Type II Transfer to the Director of the Department of Transportation.

2. All records, personnel, property, unexpended balances of appropriations, allocations, or other funds used, held, employed, available, or to be made available to the Department of Labor and Economic Growth for the activities, powers, duties, functions, and responsibilities transferred by this Section VI are transferred to the Department of Transportation.

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3. The Director of the Department of Transportation, after consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Transportation.

4. The Directors of the Department of Transportation and the Department of Labor and Economic Growth shall immediately initiate coordination to facilitate the Type II Transfer under this Section VI and shall develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Transportation.

5. The Director of the Department of Transportation shall administer any assigned functions under this Section VI in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

6. The Director of the Department of Transportation shall notify the United States Secretary of Transportation of the transfers under this Section VI pursuant to federal law.

VII. FAMILY INDEPENDENCE AGENCY

Office of Children and Adult Licensing

A. Any authority, powers, duties, functions, and responsibilities of the Bureau of Family Services, an organizational unit within the Department of Consumer and Industry Services, are transferred by Type II Transfer from the Department of Consumer and Industry Services to the Family Independence Agency, including but not limited to all of the following:

1. Any authority, powers, duties, functions, and responsibilities of management support functions including but not limited to management information systems, facility support, and licensing hearings, except as provided in Section VII.D of this Order.

2. Any authority, powers, duties, functions, and responsibilities of adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, and 1974 PA 381, MCL 338.41 to 338.47.

3. Any authority, powers, duties, functions, and responsibilities of child welfare, child care organization, child caring institution, child placing organization, children's camp, child care center, day care center, foster family home, foster family group home, family day care home, and group day care home licensing and regulation under 1973 PA 116, MCL 722.111 to 722.128, the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.

4. Any authority, powers, duties, functions, and responsibilities of licensing and regulation of homes for the aged under Article 17 of the Public Health Code, 1978 PA 368, MCL 333.20101 to 333.22260, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.

B. The Adult Foster Care Licensing Advisory Council and all of its authority, powers, duties, functions, and responsibilities of the Adult Foster Care Licensing Advisory Council under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, are transferred by Type II Transfer to the Family Independence Agency.

C. The Director of the Family Independence Agency shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

D. The Director of the Family Independence Agency, after consultation with the Director of the Department of Consumer and Industry Services, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Family Independence Agency and all prescribed functions of rule-making, licensing, and registration, including but not limited to the prescription of rules, regulations, standards, and adjudications, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, shall be transferred to the Director of the Family Independence Agency. The Bureau of Hearings of the Department of Consumer and Industry Services may continue to conduct hearings for the Bureau of Family Services. The Department of Consumer and Industry Services and the Family Independence Agency shall enter into an interdepartmental agreement providing for the conduct of hearings for the Bureau of Family Services by the Bureau of Hearings.

E. All records, personnel, property, and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Department of Consumer and Industry Services for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Family Independence Agency.

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F. The Directors of the Family Independence Agency and the Department of Consumer and Industry Services shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Family Independence Agency.

G. Upon transfer to the Family Independence Agency, the Bureau of Family Services is renamed the Office of Children and Adult Licensing.

VIII. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of Fiscal Year 2003-2004.

B. All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

C. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

History: 2003, E.R.O. No. 2003-1, Eff. Dec. 7, 2003.

Compiler's note: In subsection Z. under section "**I. DEFINITIONS**," the citation to "Section 3(a) of the Executive Reorganization Act of 1963, 1965 PA 380" evidently should read "Section 3(a) of the Executive Reorganization Act of 1965, 1965 PA 380."

In subdivision 7. under section "**II. DEPARTMENT OF LABOR AND ECONOMIC GROWTH, C. Bureau of Construction Codes and Fire Safety**," the citation to "Fire Fighters Training Council Act of 1996, 1966 PA 291" evidently should read "Fire Fighters Training Council Act of 1966, 1966 PA 291."

In subdivision 6.b. and subdivision 7. under section "**II. DEPARTMENT OF LABOR AND ECONOMIC GROWTH, F. Department of Treasury, Brownfield Redevelopment Single Business Tax Credits**," the citation to the "Single Business Tax Act", evidently should read 1975 PA 225 "Single Business Tax Act, 1975 PA 228."

All references to the "Worker's Disability and Compensation Act of 1969" evidently should read "Worker's Disability Compensation Act of 1969."

In subsection A.5. under section "**III. DEPARTMENT OF CAREER DEVELOPMENT**," the citation to "1994 PA 219, MCL 408.221 to 208.232" evidently should read "1994 PA 219, MCL 408.221 to 408.232."

In subdivision 3.a. under section "**IV. DEPARTMENT OF COMMUNITY HEALTH, B. Bureau of Health Systems**," the citation to "1978 PA 368, MCL 333.21301 to 31333" evidently should read "1978 PA 368, MCL 333.21301 to 333.21333."

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2005-1

445.2021 Creation of state office of administrative hearings (SOAHR) as type I agency within department of labor and economic growth; duties; services; hearings; functions and personnel not subject to transfer; transfer of administrative rule processing and review function by type III transfer.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 5 of Article XI of the Michigan Constitution of 1963 empowers the Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service;

WHEREAS, the People of the State of Michigan deserve a regulatory and administrative hearing process that is efficient, effective, understandable, and responsive;

WHEREAS, it is organizationally sound and appropriate to concentrate the review and legal certification of administrative rules and administrative hearing functions in one office;

WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings will eliminate unnecessary duplication and facilitate more effective implementation of policy;

WHEREAS, better coordination of administrative hearing functions can contribute to the development of expertise in the requisite areas of law and foster more extensive knowledge of relevant statutes, rules, governing court cases and precedent;

WHEREAS, improvements in the organization of state government are necessary to provide Michigan residents and job providers with improved delivery of state services;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

2. "Commissioner of Financial and Insurance Services" means the head of the Office of Financial and Insurance Services, created under Executive Order 2000-4, MCL 445.2003.

3. "Contested Case" means that term as defined in Section 3(3) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.203.

4. "Department or Agency" includes each principal department of state government, an agency, a board, a commission, a tribunal, or other entity within the Executive Branch of state government. "Department or Agency" does not include the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, or the Executive Office of the Governor.

5. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

6. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.125.

7. "Hearing Officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a Department or Agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing Officer" does not include an elected state official, a member of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

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8. "Office of Regulatory Reform" means the entity created within the Executive Office of the Governor under Executive Order 1995-6, MCL 10.151, as codified within the Department of Management and Budget under Section 34 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.234 (as added by 1999 PA 262), transferred to the Executive Office of the Governor under Executive Order 2000-1, MCL. 10.152, and re-transferred to the Department of Management and Budget under Executive Order 2002-11, MCL 10.153.

9. "State Office of Administrative Hearings and Rules" or "SOAHR" means the Type I Agency created within the Department of Labor and Economic Growth under Section II.

10. "Type I Agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

11. "Type III Transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

A. The State Office of Administrative Hearings and Rules (SOAHR) is created as a Type I Agency within the Department of Labor and Economic Growth. The SOAHR shall be headed by a director known as the Executive Director of the State Office of Administrative Hearings and Rules. The appointing authority for the Executive Director of the SOAHR shall be the Governor. The Executive Director of the SOAHR shall administer the personnel functions of the SOAHR and be the appointing authority for employees of the SOAHR.

B. As a Type I Agency, the State Office of Administrative Hearings and Rules shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. The budgeting, procurement, and related management functions of the SOAHR shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

C. The State Office of Administrative Hearings and Rules shall lead state efforts to continually evaluate policies and procedures for conducting administrative hearings and for the processing and review of administrative rules with the goal of developing best practices in these areas.

D. The State Office of Administrative Hearings and Rules shall provide services related to administrative hearing functions including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, for a Department or Agency affected by the transfers under Section III. To assure the timely and effective delivery of services related to administrative hearing functions, compliance with state and federal law, the promulgation of administrative rules, and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

E. Hearings conducted by the State Office of Administrative Hearings and Rules shall be conducted in an impartial manner. A Contested Case hearing, or the hearing portion of a Contested Case, conducted by the SOAHR shall be conducted in an impartial manner, as required under Section 79 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.279. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the SOAHR shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for the officer to continue the hearing, another presiding officer may be assigned by the Executive Director of the SOAHR unless it is shown that substantial prejudice to the party will result therefrom.

F. A Hearing Officer of the State Office of Administrative Hearings and Rules may administer an oath or affirmation to a witness in a matter before the SOAHR, certify to official acts, and take depositions, in the same manner as authorized under Section 74 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.274. To the extent authorized by law, a Hearing Officer of the SOAHR may issue a subpoena requiring a party or a witness to attend and testify at a hearing and to require the production of records.

G. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Public Service Commission from a list of Hearing Officers approved by the Michigan Public Service Commission to perform administrative hearing functions for the Michigan Public Service Commission. If the Michigan Public Service Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Public Service Commission. Personnel reviews of Hearing Officers performing administrative hearing functions for the Michigan Public Service Commission shall be conducted jointly by the SOAHR and the Michigan Public Service Commission or its

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designee from within the Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

H. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Employment Relations Commission from a list of Hearing Officers approved by the Michigan Employment Relations Commission to perform administrative hearing functions for the Michigan Employment Relations Commission. If the Michigan Employment Relations Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Employment Relations Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

I. At the request of a Department or Agency not affected by the transfers under Section III, the SOAHR may provide services related to administrative hearing functions, including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, and related functions under an interagency agreement between the SOAHR and the Department or Agency.

III. TRANSFER OF ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL

A. Except as otherwise provided in Sections II.G, II.H, and IV, all authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of a Department or Agency involved in any of the following activities related to administrative hearing functions are transferred to the State Office of Administrative Hearings and Rules:

1. The conduct or handling of administrative hearings by a Hearing Officer, including, but not limited to, a Contested Case hearing or the hearing portion of a Contested Case, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

2. The designation, authorization, appointment, or selection of Hearing Officers.

3. The development, writing, and submission of any proposal for decision or report following an administrative hearing by a Hearing Officer.

4. The functions related to administrative hearings performed by a Hearing Officer or other individual such as staff support for hearings or Hearing Officers, or the management or administration of hearings or Hearing Officers.

IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER

A. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources related to the appeal, review of, or final determination regarding a decision or proposed decision issued by a Hearing Officer for a Department or Agency shall remain with the Department or Agency, and are not transferred under Section III.

B. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under the authority granted to the Commission by Section 5 of Article XI of the Michigan Constitution of 1963 are transferred under Section III, unless approved by the Civil Service Commission.

C. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources involved in any of the following activities related to administrative hearing functions are not transferred to the State Office of Administrative Hearings and Rules under Section III:

1. Hearings conducted by an elected state officer, a member or members of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

2. An informal conference not subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, under Michigan law.

3. Any hearings conducted by the State Administrative Board or a committee of the State Administrative Board.

4. Hearings conducted by an independent hearing officer under Part 5 of The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1501 to 550.1518.

5. Hearings conducted by an independent hearing officer under Part 6 of the Nonprofit Healthcare Corporation Reform Act, 1980 PA 350, MCL 550.1601 to 550.1619, except for an administrative hearing conducted under Section 1605 of the Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1605.

6. Hearings conducted by independent hearings officers selected by the Commissioner of Financial and Insurance Services from a list submitted by the American Arbitration Association under Subsection (3) of Section 2030 of The Insurance Code of 1956, 1956 PA 218, MCL 500.2030.

7. Administrative hearings conducted by the Department of Civil Rights consistent with the power of the

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Civil Rights Commission to conduct hearings under Section 29 of Article V of the Michigan Constitution of 1963.

8. Administrative hearings conducted by the Department of State under any of the following:

a. 1978 PA 472, MCL 4.411 to 4.431 (lobbyists, lobbying agents, and lobbying activity).

b. The Michigan Notary Public Act, 2003 PA 238, MCL 55.261 to 55.315.

c. The Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992.

d. The Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.

e. The Driver Education and Training Schools Act, 1974 PA 369, MCL 256.601 to 256.612.

f. The Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923.

g. The Motor Vehicle Service and Repair Act, 1974 PA 300, MCL 257.1301 to 257.1340.

h. Section 80190 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80190 (marine safety).

i. Section 81140 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81140 (off-road recreation vehicles).

j. Part 821 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.82101 to 324.82160 (snowmobiles).

V. TRANSFER OF ADMNISTRATIVE RULE PROCESSING AND REVIEW FUNCTIONS

A. All authority, powers, duties, functions, responsibilities, and rule-making authority of the Office of Regulatory Reform are transferred by Type III Transfer to the State Office of Administrative Hearings and Rules created under Section II, including, but not limited to, any authority, powers, duties, functions, responsibilities, or rule-making authority of the Office of Regulatory Reform under any of the following:

1. The Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328.

2. 1970 PA 193, MCL 8.41 to 8.48 (compilation of laws and rules).

3. The Legislative Council Act, 1986 PA 268, MCL 4.1101 to 4.1901.

4. Executive Order 1995-6, MCL 10.151.

5. Executive Order 2000-1, MCL. 10.152.

6. Executive Order 2002-11, MCL 10.153.

B. The position of Administrative Rules Manager is created within the State Office of Administrative Hearings and Rules. The powers, duties, functions, responsibilities, and rule-making authority transferred under this Section V shall be administered within the SOAHR under the direction of the Administrative Rules Manager.

C. The Director of the Department of Labor and Economic Growth, in consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under this Section V.

D. The Director of the Department of Management and Budget shall immediately initiate coordination with the Department of Labor and Economic Growth to facilitate the transfers and develop and issue a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Management and Budget or the Office of Regulatory Reform related to the transfers under this Section V.

E. The Office of Regulatory Reform is abolished.

VI. MISCELLANEOUS

A. An individual designated by the Governor as the Administrative Hearing Consolidation Transition Director shall be responsible for coordination of the implementation of Section III. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall jointly identify the positions that will be transferred to the State Office of Administrative Hearings and Rules under Section III, consistent with this Order. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall make every effort to develop agreements specifying the positions that will be transferred under Section III by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred under Section III, the Administrative Hearing Consolidation Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the SOAHR shall be consistent with this Order and documented by a memorandum of understanding between the director of the principal department that includes a Department or Agency affected by this Order and the Director of the Department of Labor and Economic Growth.

B. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the

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implementation of all transfers to the State Office of Administrative Hearings and Rules under Section III.

C. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall immediately initiate coordination with Departments and Agencies to facilitate the transfers under Section III. Each principal department that includes a Department or Agency affected by the transfers under Section III shall issue, after consultation with the Administrative Hearings Consolidation Transition Director, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring departments and agencies related to the transfers under Section III.

D. Departments and Agencies and state officers shall fully and actively cooperate with the State Office of Administrative Hearings and Rules and the Administrative Hearings Consolidation Transition Director in the implementation of this Order. The Executive Director of the SOAHR may request the assistance of other Departments and Agencies and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and such departments and agencies shall provide such assistance.

E. The Executive Director of the State Office of Administrative Hearings and Rules shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

F. The Executive Director of the State Office of Administrative Hearings and Rules in writing may delegate within the SOAHR a duty or power conferred on the Executive Director of the SOAHR by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director of the SOAHR.

G. The Executive Director of the State Office of Administrative Rules, or his or her designee, may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the SOAHR and its Executive Director. Under this provision, the Executive Director of the SOAHR, or his or her designee, may specifically hire or retain such contractors, sub-contractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary to provide legal advice, legal services, arbitration services or mediation services, to provide for research and development activity, and to provide strategic planning services, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the State Office of Administrative Hearings and Rules are transferred to the State Office of Administrative Hearings and Rules.

I. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

J. All rules, orders, contracts, and agreements relating to the functions transferred to the State Office of Administrative Hearings and Rules under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

K. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

L. After the effective date of this Order, and as necessary to accomplish the missions and goals of executive branch departments and agencies, the Executive Director of the State Office of Administrative Hearings and Rules or the director of a principal department of state government may petition the State Administrative Board to detail an employee or a position transferred to the SOAHR from a department under the provisions of this Section III back to the department of origin, or a successor department. Consistent with the authority of the State Administrative Board under Section 3 of 1921 PA 2, MCL 17.3, to exercise general supervisory control over the functions and activities of all administrative departments, boards, commissions, and officers of this state and to order an interchange or transfer of employees between departments, boards, commissions, and state institutions when necessary, the State Administrative Board may, in its discretion and to the extent authorized by law, order the requested transfer.

M. Nothing in this Order shall be construed to diminish or limit the power of the Civil Service

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Commission to exercise authority granted to the Commission under Section 5 of Article XI of the Michigan Constitution of 1963.

N. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 5 of Article XI of the Michigan Constitution of 1963 empowers the Civil Service Commission to fix rates of compensation for all classes of positions, to approve or disapprove all disbursements for personal services, to make rules and regulations covering all personnel transactions, and to regulate all conditions of employment in the state classified service;

WHEREAS, the People of the State of Michigan deserve a regulatory and administrative hearing process that is efficient, effective, understandable, and responsive;

WHEREAS, it is organizationally sound and appropriate to concentrate the review and legal certification of administrative rules and administrative hearing functions in one office;

WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings will eliminate unnecessary duplication and facilitate more effective implementation of policy;

WHEREAS, better coordination of administrative hearing functions can contribute to the development of expertise in the requisite areas of law and foster more extensive knowledge of relevant statutes, rules, governing court cases and precedent;

WHEREAS, improvements in the organization of state government are necessary to provide Michigan residents and job providers with improved delivery of state services;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

2. "Commissioner of Financial and Insurance Services" means the head of the Office of Financial and Insurance Services, created under Executive Order 2000-4, MCL 445.2003.

3. "Contested Case" means that term as defined in Section 3(3) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.203.

4. "Department or Agency" includes each principal department of state government, an agency, a board, a commission, a tribunal, or other entity within the Executive Branch of state government. "Department or Agency" does not include the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, or the Executive Office of the Governor.

5. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011.

6. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.125.

7. "Hearing Officer" means an individual who conducts or handles administrative hearings or administrative hearing functions for a Department or Agency, including, but not limited to, a hearing officer, hearings officer, hearing examiner, administrative law judge, or a presiding officer. "Hearing Officer" does not include an elected state official, a member of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

8. "Office of Regulatory Reform" means the entity created within the Executive Office of the Governor under Executive Order 1995-6, MCL 10.151, as codified within the Department of Management and Budget under Section 34 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.234 (as added by

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1999 PA 262), transferred to the Executive Office of the Governor under Executive Order 2000-1, MCL. 10.152, and re-transferred to the Department of Management and Budget under Executive Order 2002-11, MCL 10.153.

9. "State Office of Administrative Hearings and Rules" or "SOAHR" means the Type I Agency created within the Department of Labor and Economic Growth under Section II.

10. "Type I Agency" means an agency established consistent with Section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

11. "Type III Transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. CREATION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

A. The State Office of Administrative Hearings and Rules (SOAHR) is created as a Type I Agency within the Department of Labor and Economic Growth. The SOAHR shall be headed by a director known as the Executive Director of the State Office of Administrative Hearings and Rules. The appointing authority for the Executive Director of the SOAHR shall be the Governor. The Executive Director of the SOAHR shall administer the personnel functions of the SOAHR and be the appointing authority for employees of the SOAHR.

B. As a Type I Agency, the State Office of Administrative Hearings and Rules shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication independently of the Director of the Department of Labor and Economic Growth. The budgeting, procurement, and related management functions of the SOAHR shall be performed under the direction and supervision of the Director of the Department of Labor and Economic Growth.

C. The State Office of Administrative Hearings and Rules shall lead state efforts to continually evaluate policies and procedures for conducting administrative hearings and for the processing and review of administrative rules with the goal of developing best practices in these areas.

D. The State Office of Administrative Hearings and Rules shall provide services related to administrative hearing functions including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, for a Department or Agency affected by the transfers under Section III. To assure the timely and effective delivery of services related to administrative hearing functions, compliance with state and federal law, the promulgation of administrative rules, and the assignment of personnel to perform administrative hearing functions with expertise in the appropriate subject areas and the law, the SOAHR shall develop an interagency agreement relating to the provision of services with each principal department that includes a Department or Agency affected by the transfers under Section III.

E. Hearings conducted by the State Office of Administrative Hearings and Rules shall be conducted in an impartial manner. A Contested Case hearing, or the hearing portion of a Contested Case, conducted by the SOAHR shall be conducted in an impartial manner, as required under Section 79 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.279. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the SOAHR shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for the officer to continue the hearing, another presiding officer may be assigned by the Executive Director of the SOAHR unless it is shown that substantial prejudice to the party will result therefrom.

F. A Hearing Officer of the State Office of Administrative Hearings and Rules may administer an oath or affirmation to a witness in a matter before the SOAHR, certify to official acts, and take depositions, in the same manner as authorized under Section 74 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.274. To the extent authorized by law, a Hearing Officer of the SOAHR may issue a subpoena requiring a party or a witness to attend and testify at a hearing and to require the production of records.

G. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform administrative hearing functions for the Michigan Public Service Commission from a list of Hearing Officers approved by the Michigan Public Service Commission to perform administrative hearing functions for the Michigan Public Service Commission. If the Michigan Public Service Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Public Service Commission. Personnel reviews of Hearing Officers performing administrative hearing functions for the Michigan Public Service Commission shall be conducted jointly by the SOAHR and the Michigan Public Service Commission or its designee from within the Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

H. The State Office of Administrative Hearings and Rules may only assign a Hearing Officer to perform

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administrative hearing functions for the Michigan Employment Relations Commission from a list of Hearing Officers approved by the Michigan Employment Relations Commission to perform administrative hearing functions for the Michigan Employment Relations Commission. If the Michigan Employment Relations Commission objects to the continued performance of administrative hearing functions by a Hearing Officer, the SOAHR shall remove the Hearing Officer from the list of Hearing Officers approved by the Michigan Employment Relations Commission. The Executive Director of the SOAHR shall be the appointing authority for Hearing Officers subject to this paragraph.

I. At the request of a Department or Agency not affected by the transfers under Section III, the SOAHR may provide services related to administrative hearing functions, including, but not limited to, a Contested Case hearing, or the hearing portion of a Contested Case, and related functions under an interagency agreement between the SOAHR and the Department or Agency.

III. TRANSFER OF ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL

A. Except as otherwise provided in Sections II.G, II.H, and IV, all authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources of a Department or Agency involved in any of the following activities related to administrative hearing functions are transferred to the State Office of Administrative Hearings and Rules:

1. The conduct or handling of administrative hearings by a Hearing Officer, including, but not limited to, a Contested Case hearing or the hearing portion of a Contested Case, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

2. The designation, authorization, appointment, or selection of Hearing Officers.

3. The development, writing, and submission of any proposal for decision or report following an administrative hearing by a Hearing Officer.

4. The functions related to administrative hearings performed by a Hearing Officer or other individual such as staff support for hearings or Hearing Officers, or the management or administration of hearings or Hearing Officers.

IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER

A. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources related to the appeal, review of, or final determination regarding a decision or proposed decision issued by a Hearing Officer for a Department or Agency shall remain with the Department or Agency, and are not transferred under Section III.

B. No authority, powers, duties, functions, responsibilities, property, records, personnel, or funds held by the Civil Service Commission solely under the authority granted to the Commission by Section 5 of Article XI of the Michigan Constitution of 1963 are transferred under Section III, unless approved by the Civil Service Commission.

C. The authority, powers, duties, functions, responsibilities, rule-making authority, personnel, equipment, and budgetary resources involved in any of the following activities related to administrative hearing functions are not transferred to the State Office of Administrative Hearings and Rules under Section III:

1. Hearings conducted by an elected state officer, a member or members of a board, commission, or tribunal appointed by the Governor, or other state officer or employee appointed by the Governor.

2. An informal conference not subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, under Michigan law.

3. Any hearings conducted by the State Administrative Board or a committee of the State Administrative Board.

4. Hearings conducted by an independent hearing officer under Part 5 of The Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1501 to 550.1518.

5. Hearings conducted by an independent hearing officer under Part 6 of the Nonprofit Healthcare Corporation Reform Act, 1980 PA 350, MCL 550.1601 to 550.1619, except for an administrative hearing conducted under Section 1605 of the Nonprofit Health Care Corporation Reform Act, 1980 PA 350, MCL 550.1605.

6. Hearings conducted by independent hearings officers selected by the Commissioner of Financial and Insurance Services from a list submitted by the American Arbitration Association under Subsection (3) of Section 2030 of The Insurance Code of 1956, 1956 PA 218, MCL 500.2030.

7. Administrative hearings conducted by the Department of Civil Rights consistent with the power of the Civil Rights Commission to conduct hearings under Section 29 of Article V of the Michigan Constitution of 1963.

8. Administrative hearings conducted by the Department of State under any of the following:

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a. 1978 PA 472, MCL 4.411 to 4.431 (lobbyists, lobbying agents, and lobbying activity).
b. The Michigan Notary Public Act, 2003 PA 238, MCL 55.261 to 55.315.
c. The Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992.
d. The Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 to 169.282.
e. The Driver Education and Training Schools Act, 1974 PA 369, MCL 256.601 to 256.612.
f. The Michigan Vehicle Code, 1949 PA 300, MCL 257.1 to 257.923.
g. The Motor Vehicle Service and Repair Act, 1974 PA 300, MCL 257.1301 to 257.1340.
h. Section 80190 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80190 (marine safety).
i. Section 81140 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.81140 (off-road recreation vehicles).
j. Part 821 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.82101 to 324.82160 (snowmobiles).

V. TRANSFER OF ADMNISTRATIVE RULE PROCESSING AND REVIEW FUNCTIONS

A. All authority, powers, duties, functions, responsibilities, and rule-making authority of the Office of Regulatory Reform are transferred by Type III Transfer to the State Office of Administrative Hearings and Rules created under Section II, including, but not limited to, any authority, powers, duties, functions, responsibilities, or rule-making authority of the Office of Regulatory Reform under any of the following:
1. The Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328.
2. 1970 PA 193, MCL 8.41 to 8.48 (compilation of laws and rules).
3. The Legislative Council Act, 1986 PA 268, MCL 4.1101 to 4.1901.
4. Executive Order 1995-6, MCL 10.151.
5. Executive Order 2000-1, MCL. 10.152.
6. Executive Order 2002-11, MCL 10.153.

B. The position of Administrative Rules Manager is created within the State Office of Administrative Hearings and Rules. The powers, duties, functions, responsibilities, and rule-making authority transferred under this Section V shall be administered within the SOAHR under the direction of the Administrative Rules Manager.

C. The Director of the Department of Labor and Economic Growth, in consultation with the Director of the Department of Management and Budget, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under this Section V.

D. The Director of the Department of Management and Budget shall immediately initiate coordination with the Department of Labor and Economic Growth to facilitate the transfers and develop and issue a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Management and Budget or the Office of Regulatory Reform related to the transfers under this Section V.

E. The Office of Regulatory Reform is abolished.

VI. MISCELLANEOUS

A. An individual designated by the Governor as the Administrative Hearing Consolidation Transition Director shall be responsible for coordination of the implementation of Section III. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall jointly identify the positions that will be transferred to the State Office of Administrative Hearings and Rules under Section III, consistent with this Order. The Administrative Hearing Consolidation Transition Director and the director of each principal department that includes a Department or Agency affected by this Order shall make every effort to develop agreements specifying the positions that will be transferred under Section III by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred under Section III, the Administrative Hearing Consolidation Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the SOAHR shall be consistent with this Order and documented by a memorandum of understanding between the director of the principal department that includes a Department or Agency affected by this Order and the Director of the Department of Labor and Economic Growth.

B. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of all transfers to the State Office of Administrative Hearings and Rules under Section III.

C. The Administrative Hearing Consolidation Transition Director, in consultation with the Director of the Department of Labor and Economic Growth, shall immediately initiate coordination with Departments and

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Agencies to facilitate the transfers under Section III. Each principal department that includes a Department or Agency affected by the transfers under Section III shall issue, after consultation with the Administrative Hearings Consolidation Transition Director, a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the transferring departments and agencies related to the transfers under Section III.

D. Departments and Agencies and state officers shall fully and actively cooperate with the State Office of Administrative Hearings and Rules and the Administrative Hearings Consolidation Transition Director in the implementation of this Order. The Executive Director of the SOAHR may request the assistance of other Departments and Agencies and state officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and such departments and agencies shall provide such assistance.

E. The Executive Director of the State Office of Administrative Hearings and Rules shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

F. The Executive Director of the State Office of Administrative Hearings and Rules in writing may delegate within the SOAHR a duty or power conferred on the Executive Director of the SOAHR by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Executive Director of the SOAHR.

G. The Executive Director of the State Office of Administrative Rules, or his or her designee, may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the SOAHR and its Executive Director. Under this provision, the Executive Director of the SOAHR, or his or her designee, may specifically hire or retain such contractors, sub-contractors, advisors, consultants, and agents as the Executive Director may deem advisable and necessary to provide legal advice, legal services, arbitration services or mediation services, to provide for research and development activity, and to provide strategic planning services, in accordance with the relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Management and Budget.

H. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred under this Order to the State Office of Administrative Hearings and Rules are transferred to the State Office of Administrative Hearings and Rules.

I. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this Order.

J. All rules, orders, contracts, and agreements relating to the functions transferred to the State Office of Administrative Hearings and Rules under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

K. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

L. After the effective date of this Order, and as necessary to accomplish the missions and goals of executive branch departments and agencies, the Executive Director of the State Office of Administrative Hearings and Rules or the director of a principal department of state government may petition the State Administrative Board to detail an employee or a position transferred to the SOAHR from a department under the provisions of this Section III back to the department of origin, or a successor department. Consistent with the authority of the State Administrative Board under Section 3 of 1921 PA 2, MCL 17.3, to exercise general supervisory control over the functions and activities of all administrative departments, boards, commissions, and officers of this state and to order an interchange or transfer of employees between departments, boards, commissions, and state institutions when necessary, the State Administrative Board may, in its discretion and to the extent authorized by law, order the requested transfer.

M. Nothing in this Order shall be construed to diminish or limit the power of the Civil Service Commission to exercise authority granted to the Commission under Section 5 of Article XI of the Michigan Constitution of 1963.

N. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order,

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which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

History: 2005, E.R.O. No. 2005-1, Eff. Mar. 27, 2005;—Am. 2005, E.R.O. No. 2005-4, Eff. Jan. 1, 2006.

Compiler's note: Part IV., entitled "IV. ADMINISTRATIVE HEARING FUNCTIONS AND PERSONNEL NOT SUBJECT TO TRANSFER," was amended by E.R.O. No. 2005-4.

The introductory clauses of E.R.O. No. 2005-4 read as follows:

"WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

"WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

"WHEREAS, the centralization of state government functions relating to the processing and promulgation of administrative rules and the conduct of administrative hearings in a State Office of Administrative Hearings and Rules (“SOAHR”) has eliminated unnecessary duplication and facilitated more effective implementation of policy;

"WHEREAS, it is necessary and desirable to amend Executive Order 2005-1 to clarify those administrative hearing functions and personnel not subject to transfer and consolidation under Executive Order 2005-1;

"NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order:

"Section IV of Executive Order 2005-1 is amended to read as follows:"

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TOBACCO PRODUCT MANUFACTURERS' ESCROW ACCOUNTS
Act 244 of 1999

AN ACT to require tobacco product manufacturers to place funds in escrow for medical expenses incurred by the state due to tobacco related illnesses; to establish a formula for determining the amount of the escrow; to establish the conditions for release of funds from escrow; to prescribe powers and duties of the attorney general; and to provide for civil penalties for violation of this act.

History: 1999, Act 244, Imd. Eff. Dec. 28, 1999.

The People of the State of Michigan enact:

445.2051 Definitions.

Sec. 1. As used in this act:

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) "Allocable share" means that term as defined in the master settlement agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (*i*) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (*ii*) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (*iii*) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (*i*) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute 1 individual "cigarette".

(e) "Inflation adjustment" means that term as defined in the master settlement agreement.

(f) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al., Ingham county circuit court, docket no. 96-84281CZ.

(g) "Original participating manufacturer" means that term as defined in the master settlement agreement.

(h) "Participating manufacturer" means that term as defined in the master settlement agreement.

(i) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000.00 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 2(2) of this act.

(j) "Released claims" means that term as defined in the master settlement agreement.

(k) "Releasing parties" means that term as defined in the master settlement agreement.

(*l*) "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate) meets 1 or more of the following:

(*i*) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

(*ii*) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

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(*iii*) Becomes a successor of an entity described in subparagraph (*i*) or (*ii*).

(m) The term "tobacco product manufacturer" as defined in subdivision (*l*) does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within 1 or more of subdivision (*l*)(*i*) to (*iii*).

(n) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The department of treasury shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

History: 1999, Act 244, Imd. Eff. Dec. 28, 1999.

445.2052 Tobacco product manufacturer; duties; placement of funds into escrow account; release; circumstances; certification of compliance; violation; applicability of subsection (2); severability.

Sec. 2. (1) Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the date of enactment of this act shall do 1 of the following:

(a) Become a participating manufacturer and generally perform its financial obligations under the master settlement agreement.

(b) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(*i*) 1999: $.0094241 per unit sold after the date of enactment of this act.

(*ii*) 2000: $.0104712 per unit sold.

(*iii*) For each of 2001 and 2002: $.0136125 per unit sold.

(*iv*) For each of 2003 through 2006: $.0167539 per unit sold.

(*v*) For each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under 1 or more of the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(*i*) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(c) To the extent not released from escrow under subdivision (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(d) If a court of competent jurisdiction determines that subdivision (b) as amended by the amendatory act that added this subdivision is unconstitutional, subdivision (b) does not apply.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subsection (1)(b) shall annually certify to the department of treasury that it is in compliance with this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall be subject to all of the following that are applicable:

(a) Shall be required within 15 days to place sufficient funds into escrow to bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow.

(b) In the case of a knowing violation, shall be required within 15 days to place sufficient funds into escrow to bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of this state in an amount not to exceed

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15% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow.

(c) In the case of a second knowing violation, shall be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

(4) For purposes of subsection (3), each failure to make an annual deposit required under subsection (1)(b) shall constitute a separate violation.

(5) If, following a court determination described in subsection(2)(d), a court of competent jurisdiction determines that subsection (2) without subsection (2)(b) is unconstitutional, then this subsection applies. A tobacco product manufacturer that places funds into escrow pursuant to subsection (1)(b) shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under 1 or more of the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement.

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(*i*)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(*i*)(3) of the master settlement agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(c) To the extent not released from escrow under subdivision (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(6) If this act or any portion of the amendatory act that added this subsection is held by a court of competent jurisdiction to be unconstitutional, the remaining portions of this act shall continue in full force and effect.

History: 1999, Act 244, Imd. Eff. Dec. 28, 1999;—Am. 2003, Act 286, Imd. Eff. Jan. 8, 2004.

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MUSIC ROYALTY PRACTICES ACT
Act 430 of 2000

AN ACT to provide for the regulation of contracts between persons publicly performing or broadcasting copyrighted nondramatic musical works under certain circumstances; to provide for recognition of certain agents and employees of performing rights societies; to impose certain fees; to provide for certain powers and duties for certain state agencies and departments; and to prescribe penalties and provide remedies.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

The People of the State of Michigan enact:

445.2101 Short title.

Sec. 1. This act shall be known and may be cited as the "music royalty practices act".

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2102 Definitions.

Sec. 2. As used in this act:

(a) "Copyright owner" means the owner of a copyright of a musical work recognized and enforceable under the copyright laws. Copyright owner does not include the owner of a copyright in a motion picture or audiovisual work or in any portion of a motion picture or audiovisual work.

(b) "Copyright laws" means those laws specified pursuant to title 17 of the United States Code, 17 U.S.C. 101 to 1101.

(c) "Performing rights society" means an association, corporation, or other entity that licenses the nondramatic public performance, broadcast, or transmittal of musical works on behalf of copyright owners including, but not limited to, the American society of composers, authors, and publishers; broadcast music, inc.; and SESAC, inc.

(d) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not-for-profit organization, or any other place of business or professional office located in this state in which the public may assemble and in which musical works are publicly and nondramatically performed, broadcast, or transmitted for the enjoyment of the members of the public assembled in that place.

(e) "Royalties" means the fees payable by a proprietor to a performing rights society for the nondramatic public performance, broadcast, or transmittal of musical works.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2103 Performing rights society; duties.

Sec. 3. (1) A performing rights society doing business in this state shall maintain an electronic computer database of its repertoire. The performing rights society shall make available, in electronic form, a current list of at least the names of its authors and publishers of all its copyrighted musical works and the titles of the copyrighted musical works in its repertoire. The performing rights society shall update the list at least monthly.

(2) Upon request, any person may review the list of copyrighted works and a list of members and affiliates.

(3) The list established under subsection (1) that is in electronic form at the time a proprietor enters into a contract with a performing rights society and as supplemented by subsequent additions and deletions to that list is binding between the parties for the period of the contract.

(4) A performing rights society shall provide a copy of its most current lists of copyrighted musical works and members at cost to any person upon request. As used in this subsection, "cost" does not include the cost of maintaining the database or any other overhead.

(5) A performing rights society licensing nondramatic performance of musical works in this state shall establish and maintain a toll-free telephone number that can be used to answer inquiries regarding specific musical works licensed by that performing rights society and the copyright owners represented by that performing rights society.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2104 Performing rights society; contract for payment of royalties; conditions.

Sec. 4. A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless, at the time of the offer or any time thereafter but at least 72 hours before the execution of the contract, it provides all of the following to the proprietor in writing:

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(a) A schedule of the rates and terms of royalties under the contract including, but not limited to, any sliding scale, discounts, or reductions in fees on any basis for which the proprietor may be eligible and any schedule increases or decreases in fees during the term of the contract.

(b) Notice that the performing rights society shall, upon request of a proprietor and before entering into a contract with that proprietor, provide a schedule of the rates and terms of royalties under contracts executed by the performing rights society and proprietors of comparable businesses in the state within the past 12 months.

(c) Notice of the provisions required under section 3 including the electronic address and toll-free telephone number.

(d) Notice of the fact that there are exemptions that may exclude that proprietor from liability under the copyright laws.

(e) Upon request of the proprietor, the opportunity to review in electronic form the most current available list of the members or affiliates represented by the performing rights society.

(f) Notice that the proprietor is entitled to the information required under this act and that failure of the performing rights society to provide that information is a violation of this act.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2105 Contract for payment of royalties; requirements.

Sec. 5. (1) A contract for the payment of royalties between a proprietor and a performing rights society executed, issued, or renewed in this state shall comply with all of the following:

(a) Be in writing.

(b) Be signed by both parties to the contract.

(c) Include at least the following information:

(*i*) The proprietor's name and business address and the name and location of each place of business to which the contract applies.

(*ii*) The name and business address of the performing rights society.

(*iii*) The duration of the contract.

(*iv*) The schedule of rates and terms of royalties to be collected under the contract including, but not limited to, any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

(2) A contract between a performing rights society and a proprietor for the payment of royalties shall be offered for a term of 1 year but the parties may agree to a contract for a term other than 1 year. This section does not apply to a contract for a term negotiated between a performing rights society and a bona fide trade association representing a substantial percentage of proprietors of the same type.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2106 Performing rights society; prohibited acts.

Sec. 6. (1) A performing rights society or any agent, employee, representative, or other person acting on behalf of the performing rights society shall not do any of the following:

(a) Enter onto the premises of a proprietor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor, without first identifying himself or herself to the proprietor or to the proprietor's management employees. Such identification includes, but is not limited to, showing a business photo-identification card issued by the performing rights society, disclosing that he or she is acting on behalf of the performing rights society, and disclosing the purpose of the entry.

(b) Collect or attempt to collect a royalty payment or any other fee except as provided in a contract executed pursuant to and in compliance with this act.

(c) Use or attempt to use any act or practice in negotiating with a proprietor, or in retaliation for a proprietor's failure or refusal to negotiate, with respect to a contract for the payment of royalties, that includes any of the following:

(*i*) Using or attempting to use any unfair or deceptive act or practice in dealing with a proprietor.

(*ii*) Engaging in any coercive act or practice that is disruptive of a proprietor's business.

(*iii*) Commencing or threatening to commence a legal action in connection with an alleged copyright violation unless the performing rights society shall have advised the proprietor that he or she may comply with copyright laws with respect to copyrighted musical works in the repertoire of the performing rights society by doing any of the following:

(A) Obtaining a license from that performing rights society.

(B) Discontinuing all nondramatic public performances of musical works in that performing rights society's repertoire.

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(C) Obtaining authorization for nondramatic public performances of musical works directly from the copyright owners who are members of that performing rights society.

(2) This section does not prevent any copyright owner from exercising any exclusive rights granted by the copyright laws.

(3) This section does not prohibit the performing rights society or its agents, employees, or representatives from informing the proprietor of obligations imposed under the copyright laws.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2107 Civil action.

Sec. 7. A person suffering injury by a violation of this act may bring a civil action in a court of competent jurisdiction to recover actual damages and reasonable attorney's fees or seek injunctive or any other relief available at law or in equity.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

445.2108 Applicability of act.

Sec. 8. This act does not apply to either of the following:

(a) Contracts between performing rights societies and broadcasters licensed by the federal communications commission.

(b) Investigations by a law enforcement agency or other person regarding a suspected violation of 1994 PA 210, MCL 752.1051 to 752.1057.

History: 2000, Act 430, Imd. Eff. Jan. 9, 2001.

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UNSOLICITED COMMERCIAL E-MAIL PROTECTION ACT
Act 42 of 2003

AN ACT to require certain notices regarding the transmission of unsolicited commercial e-mail; to establish procedures for e-mail service providers; to allow recipients of e-mail to be excluded from receiving future unsolicited commercial e-mail; and to prescribe penalties and remedies.

History: 2003, Act 42, Eff. Sept. 1, 2003.

The People of the State of Michigan enact:

445.2501 Short title.

Sec. 1. This act shall be known and may be cited as the "unsolicited commercial e-mail protection act".

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2502 Definitions.

Sec. 2. As used in this act:

(a) "Commercial e-mail" means an electronic message, file, data, or other information promoting the sale, lease, or exchange of goods, services, real property, or any other thing of value that is transmitted between 2 or more computers, computer networks, or electronic terminals or within a computer network.

(b) "Computer network" means 2 or more computers that are, directly or indirectly, interconnected to exchange electronic messages, files, data, or other information.

(c) "E-mail address" means a destination, commonly expressed as a string of characters, to which e-mail may be sent or delivered.

(d) "E-mail service provider" means a person that is an intermediary in the transmission of e-mail or provides to end users of e-mail service the ability to send and receive e-mail.

(e) "Internet domain name" means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(f) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(g) "Preexisting business relationship" means a relationship existing before the receipt of an e-mail formed voluntarily by the recipient with another person by means of an inquiry, application, purchase, or use of a product or service of the person sending the e-mail.

(h) "Unsolicited" means without the recipient's express permission. An e-mail is not unsolicited if the sender has a preexisting business or personal relationship with the recipient. An e-mail is not unsolicited if it was received as a result of the recipient opting into a system in order to receive promotional material.

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2503 Unsolicited commercial e-mail; requirements.

Sec. 3. A person who intentionally sends or causes to be sent an unsolicited commercial e-mail through an e-mail service provider that the sender knew or should have known is located in this state or to an e-mail address that the sender knew or should have known is held by a resident of this state shall do all of the following:

(a) Include in the e-mail subject line "ADV:" as the first 4 characters.

(b) Conspicuously state in the e-mail all of the following:

(*i*) The sender's legal name.

(*ii*) The sender's correct street address.

(*iii*) The sender's valid internet domain name.

(*iv*) The sender's valid return e-mail address.

(c) Establish a toll-free telephone number, a valid sender-operated return e-mail address, or another easy-to-use electronic method that the recipient of the commercial e-mail message may call or access by e-mail or other electronic means to notify the sender not to transmit by e-mail any further unsolicited commercial e-mail messages. The notification process may include the ability for the commercial e-mail messages recipient to direct the sender to transmit or not transmit particular commercial e-mail messages based upon products, services, divisions, organizations, companies, or other selections of the recipient's choice. An unsolicited commercial e-mail message shall include, in print as large as the print used for the majority of the e-mail message, a statement informing the recipient of a toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or access by e-mail, notifying the

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sender not to transmit to the recipient any further commercial e-mail messages.

(d) Conspicuously provide in the text of the commercial e-mail, in print as large as the print used for the majority of the e-mail, a notice that informs the recipient that the recipient may conveniently and at no cost be excluded from future commercial e-mail from the sender as provided under subdivision (c).

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2504 Unsolicited commercial e-mail; prohibited conduct; policies and records.

Sec. 4. (1) A person who sends or causes to be sent an unsolicited commercial e-mail through an e-mail service provider located in this state or to an e-mail address held by a resident of this state shall not do any of the following:

(a) Use a third party's internet domain name or third party e-mail address in identifying the point of origin or in stating the transmission path of the commercial e-mail without the third party's consent.

(b) Misrepresent any information in identifying the point of origin or the transmission path of the commercial e-mail.

(c) Fail to include in the commercial e-mail the information necessary to identify the point of origin of the commercial e-mail.

(d) Provide directly or indirectly to another person the software described under section 5.

(2) If the recipient of an unsolicited commercial e-mail notifies the sender that the recipient does not want to receive future unsolicited commercial e-mail from the sender, the sender shall not send that recipient unsolicited commercial e-mail either directly or indirectly through a third party.

(3) A sender of unsolicited commercial e-mail shall establish and maintain the necessary policies and records to ensure that the recipient who has notified the sender under subsection (2) does not receive any e-mail from the date of the notice. The sender shall update its records under this subsection not less than every 14 business days.

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2505 Selling, giving, or distributing software; restrictions.

Sec. 5. A person shall not knowingly sell, give, or otherwise distribute or possess with the intent to sell, give, or distribute software that does any of the following:

(a) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of commercial e-mail transmission information or other routing information.

(b) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of commercial e-mail transmission information or other routing information.

(c) Is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of commercial e-mail transmission information or other routing information.

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2506 Notice of requirements; dispute resolution process.

Sec. 6. (1) An e-mail service provider may design its software so that a sender of unsolicited commercial e-mail is given notice of the requirements of this act each time the sender requests delivery of e-mail. The existence of such software shall constitute actual notice to the sender of the requirements of this act.

(2) An e-mail service provider that designs and implements a dispute resolution process for a sender who believes the sender's e-mail message has been improperly blocked, and makes contact information accessible on its website, is not liable under this act for blocking the receipt or transmission of the e-mail.

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2507 Violation; penalty; separate violations; evidence; defense.

Sec. 7. (1) Except as otherwise provided under subsection (2), a person who violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $10,000.00, or both.

(2) A person who violates section 4 or violates this act in the furtherance of another crime is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $25,000.00, or both.

(3) Each commercial e-mail sent in violation of this act is a separate violation under this section.

(4) An e-mail service provider does not violate this act as a result of either of the following:

(a) Being an intermediary between the sender and recipient in the transmission of an unsolicited commercial e-mail that violates this act.

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(b) Provides transmission of unsolicited commercial e-mail over the provider's network or facilities.

(5) It is prima facie evidence that the sender is in violation of this section if the recipient is unable to contact the sender through the return e-mail address provided by the sender under section 3.

(6) It is a defense to a case brought under this section or an action under section 8 that the unsolicited commercial e-mail was transmitted accidentally or as a result of a preexisting business relationship. The burden of proving that the commercial e-mail was transmitted accidentally or as a result of a preexisting business relationship is on the sender.

History: 2003, Act 42, Eff. Sept. 1, 2003.

445.2508 Civil action; recovery; costs and attorney fees.

Sec. 8. (1) A civil action may be brought by a person who received an unsolicited commercial e-mail in violation of this act.

(2) A civil action may be brought by an e-mail service provider through whose facilities the unsolicited commercial e-mail was transmitted in violation of this act.

(3) A civil action may be brought by the attorney general against a person who has violated this act.

(4) In each action brought under this section, a recipient, e-mail service provider, or attorney general may recover 1 of the following:

(a) Actual damages.

(b) In lieu of actual damages, recover the lesser of the following:

(*i*) $500.00 per unsolicited commercial e-mail received by the recipient or transmitted through the e-mail service provider.

(*ii*) $250,000.00 for each day that the violation occurs.

(5) The prevailing recipient or e-mail service provider shall be awarded actual costs and reasonable attorney fees.

History: 2003, Act 42, Eff. Sept. 1, 2003.

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