

representative, by the county medical examiner; or in the absence of the county medical examiner, by the county health officer or the deputy county medical examiner. If the death occurred in an institution, the medical certification shall be completed and signed not later than 48 hours after death by the attending physician; or in the absence of the attending physician, by a physician acting as the attending physician's authorized representative; or in the absence of an authorized representative, by the chief medical officer of the institution in which death occurred, after reviewing pertinent records and making other investigation as considered necessary, or by a pathologist.

(b) A physician, as described in subdivision (a), who for himself or herself or as an agent or employee of another individual neglects or refuses to certify a death record properly presented to him or her for certification by a funeral director or who refuses or neglects to furnish information in his or her possession, is guilty of a misdemeanor punishable by imprisonment for not more than 60 days, or a fine of not less than \$25.00 nor more than \$100.00, or both.

(2) The medical certification shall be provided not later than 48 hours after the death by the physician, as described in subsection (1)(a).

(3) A death record shall be certified by a funeral director licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, and shall be filed with the local registrar of the district where the death occurred not later than 72 hours after the death.

(4) Except as otherwise provided in this subsection, the death of an infant who was born alive following an attempted abortion and was surrendered to an emergency service provider under the safe delivery of newborns law, sections 1 to 20 of chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, and then died shall be reported in the same manner as for any death. However, the deceased infant shall be listed as "Baby Doe" and no information that would directly identify the deceased infant or the deceased infant's parents shall be reported, including, but not limited to, the following information:

- (a) The name of the mother or father.
- (b) The address of the mother or father.
- (c) The name of the informant.
- (d) The address of the informant.

### **333.2882 Issuance of certain certified copies; request; fee; request of adopted adult or confidential intermediary; phrase to be marked on certificate provided under subsection (2) or (3).**

Sec. 2882. (1) Except as otherwise provided in section 2890, upon written request and payment of the prescribed fee, the state registrar or local registrar shall issue the appropriate 1 of the following:

(a) A certified copy of a live birth record, an affidavit of parentage filed after June 1, 1997, or a record of stillbirth filed after June 1, 2003 to 1 of the following:

- (i) The individual who is the subject of the record.
- (ii) A parent named in the record.
- (iii) An heir, a legal representative, or a legal guardian of the individual who is the subject of the record.
- (iv) A court of competent jurisdiction.

(b) If the live birth record is 100 or more years old, a certified copy of the live birth record to any applicant.

(c) A certified copy of a death record, including the cause of death, to any applicant.

(d) A certified copy of a marriage or divorce record to any applicant, except as provided by rule.

(e) A certified copy of a fetal death record that was filed before September 30, 1978, to any applicant.

(2) Upon written request of an adult who has been adopted and payment of the prescribed fee, the state registrar shall issue to that individual a copy of his or her original certificate of live birth, if the written request identifies the name of the adult adoptee and is accompanied by a copy of a central adoption registry clearance reply form that was completed by the family independence agency and delivered to that individual as required by section 68(9) of the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.68.

(3) Upon written request of a confidential intermediary appointed under section 68b of the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.68b, presentation of a certified copy of the order of appointment, identification of the name of the adult adoptee, and payment of the required fee, the state registrar shall issue to the confidential intermediary a copy of the original certificate of live birth of the adult adoptee on whose behalf the intermediary was appointed.

(4) A copy of the original certificate of live birth provided under subsection (2) or (3) shall have the following phrase marked on the face of the copy: "This document is a copy of a sealed record and is not the active birth certificate of the individual whose name appears on this document".

**333.5431 Testing newborn infant for certain conditions; reporting positive test results to parents, guardian, or person in loco parentis; compliance; fee; "Detroit consumer price index" defined; violation as misdemeanor; hardship waiver; conduct of department regarding blood specimens; pamphlet; additional blood specimen for future identification.**

Sec. 5431. (1) A health professional in charge of the care of a newborn infant or, if none, the health professional in charge at the birth of an infant shall administer or cause to be administered to the infant a test for each of the following:

(a) Phenylketonuria.

(b) Galactosemia.

(c) Hypothyroidism.

(d) Maple syrup urine disease.

(e) Biotinidase deficiency.

(f) Sickle cell anemia.

(g) Congenital adrenal hyperplasia.

(h) Medium-chain acyl-coenzyme A dehydrogenase deficiency.

(i) Other treatable but otherwise disabling conditions as designated by the department.

(2) The informed consent requirements of sections 17020 and 17520 do not apply to the tests required under subsection (1). The tests required under subsection (1) shall be administered and reported within a time and under conditions prescribed by the department. The department may require that the tests be performed by the department.

(3) If the results of a test administered under subsection (1) are positive, the results shall be reported to the infant's parents, guardian, or person in loco parentis. A person is in compliance with this subsection if the person makes a good faith effort to report the positive test results to the infant's parents, guardian, or person in loco parentis.

(4) Subject to the annual adjustment required under this subsection and subject to subsection (6), if the department performs 1 or more of the tests required under subsection (1), the department may charge a fee for the tests of not more than \$53.71. The department shall adjust the amount prescribed by this subsection annually by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(5) A person who violates this section or a rule promulgated under this part is guilty of a misdemeanor.

(6) The department shall provide for a hardship waiver of the fee authorized under subsection (4) under circumstances found appropriate by the department.

(7) The department shall do all of the following in regard to the blood specimens taken for purposes of conducting the tests required under subsection (1):

(a) By April 1, 2000, develop a schedule for the retention and disposal of the blood specimens used for the tests after the tests are completed. The schedule shall meet at least all of the following requirements:

(i) Be consistent with nationally recognized standards for laboratory accreditation and federal law.

(ii) Require that the disposal be conducted in compliance with section 13811.

(iii) Require that the disposal be conducted in the presence of a witness. For purposes of this subparagraph, the witness may be an individual involved in the disposal or any other individual.

(iv) Require that a written record of the disposal be made and kept, and that the witness required under subparagraph (iii) signs the record.

(b) Allow the blood specimens to be used for medical research during the retention period established under subdivision (a), as long as the medical research is conducted in a manner that preserves the confidentiality of the test subjects and is consistent to protect human subjects from research risks under subpart A of part 46 of subchapter A of title 45 of the code of federal regulations.

(8) The department shall rewrite its pamphlet explaining the requirements of this section when the supply of pamphlets in existence on March 15, 2000 is exhausted. When the department rewrites the explanatory pamphlet, it shall include at least all of the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1).

(b) The purpose and value of the infant's parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (9) in a safe place.

(c) The department's schedule for retaining and disposing of blood specimens developed under subsection (7)(a).

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) may be used for medical research pursuant to subsection (7)(b).

(9) In addition to the requirements of subsection (1), the health professional described in subsection (1) or the hospital or other facility in which the birth of an infant takes place,

or both, may offer to draw an additional blood specimen from the infant. If such an offer is made, it shall be made to the infant's parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1). If the infant's parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques, including, but not limited to, lamination. The health professional or hospital or other facility employee making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes and should be kept in a safe place. The health professional or hospital or other facility making the offer may charge a fee that is not more than the actual cost of obtaining and preserving the additional blood specimen.

**Effective date of § 333.5431.**

Enacting section 1. Section 5431 of the public health code, 1978 PA 368, MCL 333.5431, as amended by this amendatory act, takes effect April 1, 2003.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5994 of the 91st Legislature is enacted into law.

Approved December 29, 2002.

Filed with Secretary of State December 30, 2002.

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**Compiler's note:** House Bill No. 5994, referred to in enacting section 2, was filed with the Secretary of State December 30, 2002, and became P.A. 2002, No. 687, Eff. Mar. 31, 2003.

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**[No. 692]**

**(HB 6493)**

AN ACT to amend 1977 PA 135, entitled "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," by repealing section 6 (MCL 445.1606).

*The People of the State of Michigan enact:*

**445.1606 Repeal of § 445.1606.**

Enacting section 1. Section 6 of 1977 PA 135, MCL 445.1606, is repealed.

Approved December 29, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 693]**

**(HB 5984)**

AN ACT to amend 1975 PA 238, entitled "An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect

by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts,” by amending sections 2, 3, and 11 (MCL 722.622, 722.623, and 722.631), section 2 as amended by 2000 PA 45 and section 3 as amended by 2002 PA 10.

*The People of the State of Michigan enact:*

### **722.622 Definitions.**

Sec. 2. As used in this act:

(a) “Adult foster care location authorized to care for a child” means an adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703, in which a child is placed in accordance with section 5 of 1973 PA 116, MCL 722.115.

(b) “Attorney” means, if appointed to represent a child under the provisions referenced in section 10, an attorney serving as the child’s legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(c) “Central registry” means the system maintained at the department that is used to keep a record of all reports filed with the department under this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

(d) “Central registry case” means a child protective services case that the department classifies under sections 8 and 8d as category I or category II. For a child protective services case that was investigated before July 1, 1999, central registry case means an allegation of child abuse or neglect that the department substantiated.

(e) “Child” means a person under 18 years of age.

(f) “Child abuse” means harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy.

(g) “Child care organization” means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) “Child care provider” means an owner, operator, employee, or volunteer of a child care organization or of an adult foster care location authorized to care for a child.

(i) “Child care regulatory agency” means the department of consumer and industry services or a successor state department that is responsible for the licensing or registration of child care organizations or the licensing of adult foster care locations authorized to care for a child.

(j) “Child neglect” means harm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child’s health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(k) "Citizen review panel" means a panel established as required by section 106 of title I of the child abuse prevention and treatment act, Public Law 93-247, 42 U.S.C. 5106a.

(l) "Member of the clergy" means a priest, minister, rabbi, Christian science practitioner, or other religious practitioner, or similar functionary of a church, temple, or recognized religious body, denomination, or organization.

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

(n) "CPSI system" means the child protective service information system, which is an internal data system maintained within and by the department, and which is separate from the central registry and not subject to section 7.

(o) "Department" means the family independence agency.

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

(q) "Expunge" means to physically remove or eliminate and destroy a record or report.

(r) "Lawyer-guardian ad litem" means an attorney appointed under section 10 who has the powers and duties referenced by section 10.

(s) "Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.

(t) "Nonparent adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child:

(i) Has substantial and regular contact with the child.

(ii) Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.

(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

(u) "Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:

(i) A licensed or registered child care organization.

(ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(v) "Relevant evidence" means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence.

(w) "Sexual abuse" means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.

(x) “Sexual exploitation” includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(y) “Specified information” means information in a central registry case record that relates specifically to referrals or reports of child abuse or neglect. Specified information does not include any of the following:

(i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

(z) “Structured decision-making tool” means the department document labeled “DSS-4752 (P3) (3-95)” or a revision of that document that better measures the risk of future harm to a child.

(aa) “Substantiated” means a child protective services case classified as a central registry case.

(bb) “Unsubstantiated” means a child protective services case the department classifies under sections 8 and 8d as category III, category IV, or category V.

**722.623 Persons required to report child abuse or neglect; written report; transmitting report and results of investigation to prosecuting attorney, county family independence agency, or law enforcement agency; pregnancy of or venereal disease in child less than 12 years of age.**

Sec. 3. (1) An individual is required to report under this act as follows:

(a) A physician, dentist, physician’s assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required by this section. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(b) A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department:

- (i) Eligibility specialist.
- (ii) Family independence manager.
- (iii) Family independence specialist.
- (iv) Social services specialist.
- (v) Social work specialist.
- (vi) Social work specialist manager.
- (vii) Welfare services specialist.

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county family independence agency of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b and 145c or sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, and 750.520b to 750.520g, has occurred, or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child's health or welfare, including, but not limited to, a member of the clergy, a teacher, or a teacher's aide, the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the department believes that the report has basis in fact, the department shall transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child.

(7) If a local law enforcement agency receives an allegation or written report of suspected child abuse or child neglect and the allegation, written report, or subsequent investigation indicates that the child abuse or child neglect was committed by a person responsible for the child's health or welfare, the local law enforcement agency shall refer the allegation or provide a copy of the written report and the results of any investigation to the county family independence agency of the county in which the abused or neglected child is found, as required by subsection (1)(a). If an allegation, written report, or subsequent investigation indicates that the individual who committed the suspected abuse or neglect is a child care provider and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall transmit a copy of the

written report or the results of the investigation to the child care regulatory agency with authority over the child care provider's child care organization or adult foster care location authorized to care for a child. Nothing in this subsection or subsection (1) shall be construed to relieve the department of its responsibilities to investigate reports of suspected child abuse or child neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.

### **722.631 Privileged communications.**

Sec. 11. Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall not constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act. This section does not relieve a member of the clergy from reporting suspected child abuse or child neglect under section 3 if that member of the clergy receives information concerning suspected child abuse or child neglect while acting in any other capacity listed under section 3.

#### **Effective date.**

Enacting section 1. This amendatory act takes effect March 1, 2003.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 694]**

**(HB 5277)**

AN ACT to amend 1925 PA 289, entitled "An act to create and maintain a fingerprint identification and criminal history records division within the department of state police; to require peace officers, persons in charge of certain institutions, and others to make reports respecting juvenile offenses, crimes, and criminals to the state police; to require the fingerprinting of an accused by certain persons; and to provide penalties and remedies for a violation of this act," by amending section 3 (MCL 28.243), as amended by 2001 PA 203.

*The People of the State of Michigan enact:*

### **28.243 Taking and forwarding fingerprints of person arrested; manner; destruction of fingerprints and arrest card; duties of clerk on final disposition of charge; contents of report; informing director of federal bureau of investigation; comparison of fingerprints and description with those on file; informing arresting agency and prosecuting attorney; applicability of provisions; prohibited conduct under subsection (5).**

Sec. 3. (1) Except as provided in subsection (3), immediately upon the arrest of a person for a felony or for a misdemeanor violation of state law for which the maximum

possible penalty exceeds 92 days' imprisonment or a fine of \$1,000.00, or both, or for criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, or for a juvenile offense, other than a juvenile offense for which the maximum possible penalty does not exceed 92 days' imprisonment or a fine of \$1,000.00, or both, the arresting law enforcement agency in this state shall take the person's fingerprints and forward the fingerprints to the department within 72 hours after the arrest. The fingerprints shall be sent to the department on forms furnished by or in a manner prescribed by the department, and the department shall forward the fingerprints to the director of the federal bureau of investigation on forms furnished by or in a manner prescribed by the director.

(2) A law enforcement agency shall take a person's fingerprints under this subsection if the person is arrested for a misdemeanor violation of state law for which the maximum penalty is 93 days or for criminal contempt under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, if the fingerprints have not previously been taken and forwarded to the department under subsection (1). A law enforcement agency shall take a person's fingerprints under this subsection if the person is arrested for a violation of a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum possible term of imprisonment is 93 days. If the person is convicted of any violation, the law enforcement agency shall take the person's fingerprints before sentencing if not previously taken. The court shall forward to the law enforcement agency a copy of the disposition of conviction, and the law enforcement agency shall forward the person's fingerprints and the copy of the disposition of conviction to the department within 72 hours after receiving the disposition of conviction in the same manner as provided in subsection (1). If the person is convicted of violating a local ordinance, the law enforcement agency shall indicate on the form sent to the department the statutory citation for the state law to which the local ordinance substantially corresponds.

(3) A person's fingerprints are not required to be taken and forwarded to the department under subsection (1) or (2) solely because he or she has been convicted of violating section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904, or a local ordinance substantially corresponding to section 904(3)(a) of the Michigan vehicle code, 1949 PA 300, MCL 257.904.

(4) The arresting law enforcement agency may take 1 set of fingerprints of a person who is arrested for a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than \$1,000.00, or both, and who fails to produce satisfactory evidence of identification as required by section 1 of 1961 PA 44, MCL 780.581. These fingerprints shall be forwarded to the department immediately. Upon completion of the identification process by the department, the fingerprints shall be destroyed.

(5) An arresting law enforcement agency in this state may take the person's fingerprints on forms furnished by the commanding officer upon an arrest for a misdemeanor other than a misdemeanor described in subsection (1), (2), or (4), and may forward the fingerprints to the department.

(6) If a court orders the taking of fingerprints of a person pursuant to section 11 or 18 of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.11 and 712A.18, or section 29 of chapter IV or section 1 of chapter IX of the code of criminal procedure, 1927

PA 175, MCL 764.29 and 769.1, the law enforcement agency shall forward the fingerprints and arrest card to the department.

(7) If a petition is not authorized for a juvenile accused of a juvenile offense, if a person arrested for having committed an offense for which he or she was fingerprinted under this section is released without a charge made against him or her, or if criminal contempt proceedings are not brought or criminal charges are not made against a person arrested for criminal contempt for a personal protection order violation under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or criminal contempt for a violation of a foreign protection order that meets the requirements for validity under section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i, the official taking or holding the person's fingerprints and arrest card shall immediately destroy the fingerprints and arrest card. The law enforcement agency shall notify the department in writing that a petition was not authorized against the juvenile or that a charge was not made or that a criminal contempt proceeding was not brought against the arrested person if the juvenile's or arrested person's fingerprints were forwarded to the department.

(8) If a juvenile is adjudicated and found not to be within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or if an accused is found not guilty of an offense for which he or she was fingerprinted under this section, upon final disposition of the charge against the accused or juvenile, the fingerprints and arrest card shall be destroyed by the official holding those items and the clerk of the court entering the disposition shall notify the department of any finding of not guilty or not guilty by reason of insanity, dismissal, or nolle prosequi, if it appears that the accused was initially fingerprinted under this section, or of any finding that a juvenile alleged responsible for a juvenile offense is not within the provisions of section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(9) Upon final disposition of the charge against the accused, the clerk of the court entering the disposition shall immediately advise the department of the final disposition of the arrest for which the person was fingerprinted if a juvenile was adjudicated to have committed a juvenile offense or if the accused was convicted of an offense for which he or she was fingerprinted under this section or section 16a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16a. With regard to any adjudication or conviction, the clerk shall transmit to the department information as to any adjudication or finding of guilty or guilty but mentally ill; any plea of guilty, nolo contendere, or guilty but mentally ill; the offense of which the accused was convicted; and a summary of any deposition or sentence imposed. The summary of the sentence shall include any probationary term; any minimum, maximum, or alternative term of imprisonment; the total of all fines, costs, and restitution ordered; and any modification of sentence. If the sentence is imposed under any of the following sections, the report shall so indicate:

(a) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.

(b) Sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15.

(c) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(d) Section 350a(4) of the Michigan penal code, 1931 PA 328, MCL 750.350a.

(10) The department shall record the disposition of each charge and shall inform the director of the federal bureau of investigation of the final disposition of any arrest or offense for which a person was fingerprinted under this section or section 16a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16a.

(11) The department shall compare the fingerprints and description received with those already on file and if the department finds that the person arrested has a criminal record, the department shall immediately inform the arresting agency and prosecuting attorney of this fact.

(12) The provisions of subsection (8) that require the destruction of the fingerprints and the arrest card do not apply to a person who was arraigned in circuit court or the family division of circuit court for any of the following:

(a) The commission or attempted commission of a crime with or against a child under 16 years of age.

(b) Rape.

(c) Criminal sexual conduct in any degree.

(d) Sodomy.

(e) Gross indecency.

(f) Indecent liberties.

(g) Child abusive commercial activities.

(h) A person who has a prior conviction, other than a misdemeanor traffic offense, unless a judge of a court of record, except the probate court, by express order on the record, orders the destruction or return of the fingerprints and arrest card.

(i) A person arrested who is a juvenile charged with an offense that would constitute the commission or attempted commission of any of the crimes in this subsection if committed by an adult.

(13) Subsection (5) does not permit the forwarding to the department of the fingerprints of a person accused and convicted under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to a provision of that act, unless the offense is punishable upon conviction by imprisonment for more than 92 days or is an offense that is punishable by imprisonment for more than 92 days upon a subsequent conviction.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 695]**

**(HB 5583)**

AN ACT to amend 1976 PA 451, entitled "An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, and intermediate school districts; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure

of boarding schools; to prescribe penalties; and to repeal acts and parts of acts,” by amending section 1285a (MCL 380.1285a), as added by 1996 PA 285.

*The People of the State of Michigan enact:*

**380.1285a Child care center subject to fire prevention or fire safety requirements; requirements for operation of before- or after-school program.**

Sec. 1285a. (1) If a school district or intermediate school district operates a child care center, as defined in section 1 of 1973 PA 116, MCL 722.111, then, except as provided in this subsection, the child care center is subject to the requirements of 1973 PA 116, MCL 722.111 to 722.128. If a child care center established and operated by a school district or intermediate school district is located in a school building that is approved and inspected by the state fire marshal or other similar authority as provided in section 3 of 1937 PA 306, MCL 388.853, for school purposes and is in compliance with school fire safety rules, as determined by the state fire marshal or a fire inspector certified pursuant to section 2b of the fire prevention code, 1941 PA 207, MCL 29.2b, the child care center is not subject to any fire prevention or fire safety requirements under 1973 PA 116, MCL 722.111 to 722.128. Beginning July 1, 2003, as used in this subsection, “child care center” does not include a program described in subsection (2) that has been granted an exemption from child care center approval by the department of consumer and industry services as provided under section 1(2) of 1973 PA 116, MCL 722.111.

(2) Beginning July 1, 2003, if a school district, public school academy, or intermediate school district operates or contracts for the operation of a before- or after-school program for children in grades K to 8, and if the program is exempt from child care center approval as provided under section 1(2) of 1973 PA 116, MCL 722.111, all of the following apply to the operation of the program:

(a) The program shall meet all of the following staffing requirements:

(i) Shall have at least 2 adult program staff members present at all times when children are present.

(ii) Shall have a child to adult program staff member ratio that meets the following:

(a) For children in grades K to 3, is no greater than the lesser of either 20 children to 1 adult program staff member or the average pupil to teacher ratio during school hours in that school district, public school academy, or intermediate school district in regular K to 3 classrooms.

(b) For children in grades 4 to 8, is no greater than the lesser of either 25 children to 1 adult program staff member or the average pupil to teacher ratio during school hours in that school district, public school academy, or intermediate school district in regular grade 4 to 8 classrooms.

(iii) Within 3 months after he or she begins to work in the program, each adult program staff member shall hold valid certification in cardiopulmonary resuscitation and basic first aid issued by the American red cross, American heart association, or a comparable organization or institution approved by the department.

(b) The program shall be located at school in facilities comparable to rooms used by pupils during the regular school day.

(c) The program shall provide daily activities and relationships that offer each child in the program opportunities for physical development; social development, including positive self-concept; and intellectual development.

(d) If food is served, the food service shall comply with the same nutrition requirements that apply to food service by the school district, public school academy, or intermediate school district during the regular school day.

(e) If the school district, public school academy, or intermediate school district uses its employees to staff the program, before assigning a staff member to work in the program, the school district, public school academy, or intermediate school district shall comply with sections 1230 and 1230a with respect to that individual to the same extent as if the individual were being hired as a teacher. If the school district, public school academy, or intermediate school district contracts for the operation or staffing of the program, the contract shall contain assurance that the contracting person or entity, before assigning an individual to work in the program, will comply with sections 1230 and 1230a with respect to that individual to the same extent as if the person or entity were a school district employing the individual as a teacher. The department of state police shall provide information to a school district, public school academy, intermediate school district, or contracting person or entity requesting information under this subdivision to the same extent as if the school district, public school academy, intermediate school district, or person or entity were a school district making the request under section 1230 or 1230a.

(f) The board of the school district or intermediate school district or board of directors of the public school academy, in consultation with the director of the program and the principal of the school at which the program is operated, shall develop, adopt, and annually review a policy concerning the program that, at a minimum, addresses safety procedures for the program, including first aid, food safety, discipline, dispensing and storage of medication, and access to student emergency information and telephones.

(g) Not later than September 1 of each school year, the board of the school district or intermediate school district or board of directors of the public school academy shall adopt and submit to the secretary of the intermediate school board a resolution affirming that the program and the corresponding policies comply with this section. This submission shall include a copy of the policy under subdivision (f).

(h) The board of the school district or intermediate school district or board of directors of the public school academy shall make copies of the policy under subdivision (f), and of any annual reviews or revisions, available to the public.

(3) Not later than April 1, 2003, the department, in consultation with the department of consumer and industry services, shall develop and make available to the public model standards for before- or after-school programs operated under subsection (2) that address human relationships; indoor environment; outdoor environment; activities; safety, health, and nutrition; and administration. In developing these model standards, the department shall give substantial consideration to similar factors in the requirements placed on child care centers under 1973 PA 116, MCL 722.111 to 722.128. A school district, public school academy, or intermediate school district is not required to follow these model standards.

(4) Beginning July 1, 2003, the board of a school district or intermediate school district or board of directors of a public school academy shall ensure that any written information published or distributed by the school district, public school academy, or intermediate school district concerning a before- or after-school program it operates under subsection (2) includes a statement in at least 10-point type notifying the public whether the program follows or deviates from the model standards developed under subsection (3).

### **Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5584 of the 91st Legislature is enacted into law.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

**[No. 696]****(HB 5584)**

AN ACT to amend 1973 PA 116, entitled “An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,” by amending section 1 (MCL 722.111), as amended by 1994 PA 205.

*The People of the State of Michigan enact:*

**722.111 Definitions; exemption from act.**

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

(a) “Child care organization” means a governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children’s camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or day care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order pursuant to section 4(3) of 1968 PA 293, MCL 722.4.

(ii) Provides care exclusively to persons who are 18 years of age or older and to minors who have been emancipated by court order pursuant to section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(b) “Child caring institution” means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed pursuant to section 5(6).

(c) “Child placing agency” means a governmental organization or an agency organized pursuant to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for

adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are 16 or 17 years of age and who are living in unlicensed residences as provided in section 5(4).

(d) “Children’s camp” means a residential, day, troop, or travel camp conducted in a natural environment for more than 4 school-age children, apart from the children’s parents, relatives, or legal guardians, for 5 or more days in a 14-day period. A children’s camp provides care and supervision for the same group of children for usually not more than 12 weeks.

(e) “Child care center” or “day care center” means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. Child care center or day care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than 3 hours per day for an indefinite period or for not more than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

(ii) A facility operated by a religious organization where children are cared for not more than 3 hours while persons responsible for the children are attending religious services.

(iii) Beginning July 1, 2003, a facility or program for school-age children that is operated at a school by a public school or by a person or entity with whom a public school contracts for services, in accordance with section 1285a(2) of the revised school code, 1976 PA 451, MCL 380.1285a, if that facility or program has been granted an exemption under subsection (2).

(f) “Private home” means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group day care home, or a family day care home, as follows:

(i) “Foster family home” is a private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household pursuant to the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(ii) “Foster family group home” means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household pursuant to the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(iii) “Family day care home” means a private home in which 1 but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day,

unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(iv) “Group day care home” means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year.

(g) “Licensee” means a person, partnership, firm, corporation, association, nongovernmental organization, or local or state government child care organization that has been issued a license under this act to operate a child care organization.

(h) “Provisional license” means a license issued to a child care organization that is temporarily unable to conform to all of the rules promulgated under this act.

(i) “Regular license” means a license issued to a child care organization indicating that the organization is in compliance with all rules promulgated under this act.

(j) “Guardian” means the guardian of the person.

(k) “Minor child” means any of the following:

(i) A person less than 18 years of age.

(ii) A person who is a resident in a child caring institution, children’s camp, foster family home, or foster family group home; who becomes 18 years of age while residing in the child caring institution, children’s camp, foster family home, or foster family group home; and who continues residing in the child caring institution, children’s camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. However, a minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home pursuant to an adjudication under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

(A) Two, if the total number of residents is 10 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 15 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(iii) A person 18 years of age or older who is placed in a foster family home under section 5(7).

(l) “Registrant” means a person who has been issued a certificate of registration under this act to operate a family day care home.

(m) “Registration” means the process by which the department of consumer and industry services regulates family day care homes, and includes the requirement that a family day care home certify to the department that the family day care home has complied with and will continue to comply with the rules promulgated under this act.

(n) “Certificate of registration” means a written document issued under this act to a family day care home through registration.

(o) “Related” means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

(p) “Religious organization” means church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

(2) A facility or program for school-age children that is operated at a school by a public school or by a person or entity with whom a public school contracts for services and that has been in operation and approved for a minimum of 4 years may apply to the department of consumer and industry services to be exempt from this act. The department of consumer and industry services shall respond to a facility or program requesting exemption under this subsection within 45 days from the date the completed application is received. The department of consumer and industry services may exempt from this act a facility or program that meets all of the following criteria:

(a) The facility or program has been in operation and approved for a minimum of 4 years before the application date.

(b) During the 4 years before the application date, the facility or program has not had a substantial violation of this act, rules promulgated under this act, or the terms of an approval under this act.

(c) The school board or board of directors adopts a resolution supporting the application for exemption described in this subsection.

**Conditional effective date.**

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5583 of the 91st Legislature is enacted into law.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**Compiler's note:** House Bill No. 5583, referred to in enacting section 1, was filed with the Secretary of State December 30, 2002, and became P.A. 2002, No. 695, Eff. Mar. 31, 2003.

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**[No. 697]**

**(SB 1164)**

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

agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 3135 and 3163 (MCL 500.3135 and 500.3163), section 3135 as amended by 1995 PA 222.

*The People of the State of Michigan enact:*

**500.3135 Tort liability for noneconomic loss; action for damages pursuant to subsection (1); abolition of tort liability; exceptions; action for damages pursuant to subsection (3)(d); commencement of action; removal; costs; decision as res judicata; "serious impairment of body function" defined.**

Sec. 3135. (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. However, for a closed-head injury, a question of fact for the jury is created if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury.

(b) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

(c) Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101 at the time the injury occurred.

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

(a) Intentionally caused harm to persons or property. Even though a person knows that harm to persons or property is substantially certain to be caused by his or her act or omission, the person does not cause or suffer that harm intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

(b) Damages for noneconomic loss as provided and limited in subsections (1) and (2).

(c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

(d) Damages for economic loss by a nonresident in excess of the personal protection insurance benefits provided under section 3163(4). Damages under this subdivision are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

(e) Damages up to \$500.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (4).

(4) In an action for damages pursuant to subsection (3)(e):

(a) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

(b) Liability shall not be a component of residual liability, as prescribed in section 3131, for which maintenance of security is required by this act.

(5) Actions under subsection (3)(e) shall be commenced, whenever legally possible, in the small claims division of the district court or the municipal court. If the defendant or plaintiff removes the action to a higher court and does not prevail, the judge may assess costs.

(6) A decision of a court made pursuant to subsection (3)(e) is not res judicata in any proceeding to determine any other liability arising from the same circumstances as gave rise to the action brought pursuant to subsection (3)(e).

(7) As used in this section, "serious impairment of body function" means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

**500.3163 Certification by admitted and nonadmitted insurers as to protection of out-of-state resident; rights and immunities of insurer and insureds; benefits to out-of-state resident; limitation.**

Sec. 3163. (1) An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state

arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act.

(2) A nonadmitted insurer may voluntarily file the certification described in subsection (1).

(3) Except as otherwise provided in subsection (4), if a certification filed under subsection (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.

(4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to \$500,000.00. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

#### **Applicability of amendatory act.**

Enacting section 1. This amendatory act applies to motor vehicle accidents that occur on or after January 1, 2003.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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### **[No. 698]**

#### **(SB 63)**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending section 2567 (MCL 600.2567), as amended by 1990 PA 346, and by adding section 2568.

*The People of the State of Michigan enact:*

#### **600.2567 Fees of register of deeds; imposition of fee by charter county; “page” defined.**

Sec. 2567. (1) Except as provided in subsection (3), a register of deeds is entitled to the following fees, which are not taxable as costs except as indicated:

(a) For entering and recording a deed, mortgage, certified copy of an attachment, notice of the pendency of a suit, or other instrument, \$8.00 for the first page and \$3.00 for

each additional and succeeding page. The fee shall be paid when the deed, mortgage, certified copy of an attachment, notice of the pendency of a suit, or other instrument is left for record. Until December 31, 2006, the register of deeds shall deposit \$5.00 of the total fee collected for each recording into the automation fund established under section 2568. For any document that assigns or discharges more than 1 instrument, \$3.00 shall be added to the recording fee for each additional instrument assigned or discharged.

(b) For copies of any records or papers, if required, \$1.00 per page, taxable as costs if otherwise allowed.

(c) For a seal to exemplification, \$1.00.

(d) For searching the records and files, on request, by the office of the register of deeds, 50 cents for each year for which grantor/grantee searches are made, with a minimum fee of \$5.00, except that the fee for tract index searches shall be based upon the cost of establishing and maintaining a tract index.

(e) For filing every other paper, and making an entry of it, if necessary, \$1.00, unless otherwise specifically provided for.

(f) For searching for every other paper, on request, by the office of the register of deeds, \$1.00 for each paper examined.

(2) In addition to any other fees prescribed in subsection (1) or (3), a register of deeds shall collect a fee of \$2.00 for entering and recording a deed, mortgage, certified copy of an attachment, notice of the pendency of a suit, or other instrument. The fee shall be paid when the deed, mortgage, certified copy of an attachment, notice of the pendency of a suit, or other instrument is left for record.

(3) A charter county may impose a fee schedule by ordinance or resolution with different amounts than the amounts prescribed by subsection (1). A charter county shall not impose a fee that is greater than the cost of the service for which the fee is charged.

(4) As used in this section, "page" means 1 side of a single sheet of paper at least 8-1/2 inches by 11 inches in length and not exceeding 8-1/2 inches by 14 inches in length and not less than 20-pound weight.

### **600.2568 Automation fund.**

Sec. 2568. (1) Each county in this state shall establish an automation fund, and that fund shall receive money deposited by the register of deeds of the county in accordance with section 2567. The county treasurer shall direct investment of the fund and shall credit to the fund interest and earnings from fund investments.

(2) The county register of deeds of each county shall expend the fees credited to the fund under section 2567 subject to an appropriation under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, for upgrading technology in the register of deeds office, with priority given to upgrading search capabilities. Upgrading includes the design and purchase of equipment and supplies, and implementation of systems and procedures that allow the register of deeds to receive, enter, record, certify, index, store, search, retrieve, copy, and otherwise process by automated procedures and advanced technology documents, instruments, abstracts, maps, plats, and other items recorded and maintained by the register of deeds.

(3) Not later than 90 days after the effective date of the amendatory act that added this subsection, each register of deeds shall begin to implement procedures to process and make available all items recorded, compiled, or maintained by that register of deeds, using the automated procedures and advanced technology described in subsection (2) to the maximum extent feasible utilizing the fund created under subsection (1).

(4) Four years after the effective date of the amendatory act that added this section, the register of deeds of each county shall prepare a report to the legislature that addresses, but is not limited to, each of the following issues:

(a) The progress that has been made by the register of deeds since the effective date of the amendatory act that added this section in achieving a goal of timely processing of recordable instruments.

(b) The extent to which the register of deeds has made records in the register's possession computer accessible by way of internet websites or other on-line media.

(5) The reports required under subsection (4) may be compiled into a single report by an agent of the county registers of deeds before it is submitted to the legislature.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 699]**

**(HB 6446)**

AN ACT to amend 1950 (Ex Sess) PA 27, entitled "An act defining and regulating certain installment sales of motor vehicles; prescribing the conditions under which such sales may be made and regulating the financing thereof; regulating and licensing persons engaged in the business of making or financing such sales; prescribing the form, contents and effect of instruments used in connection with such sales and the financing thereof; prescribing certain rights and obligations of buyers, sellers, persons financing such sales and others; limiting charges in connection with such instruments and fixing maximum interest rates for delinquencies, extensions and loans; regulating insurance in connection with such sales; regulating repossessions, redemptions, resales and deficiency judgments and the rights of parties with respect thereto; authorizing extensions, loans and forbearances related to such sales; authorizing investigations and examinations of persons engaged in the business of making or financing such sales; transferring certain powers and duties with respect to finance companies to the commissioner of the financial institutions bureau; and prescribing penalties," by amending sections 13 and 18 (MCL 492.113 and 492.118), section 13 as amended by 1990 PA 27 and section 18 as amended by 1995 PA 166.

*The People of the State of Michigan enact:*

**492.113 Installment sale contract; contents; collateral security; notice of legal rights; liability.**

Sec. 13. (1) An installment sale contract shall state the full names and addresses of all the parties to the contract and the date when signed by the buyer and shall contain a description of the motor vehicle sold that is sufficient for accurate identification.

(2) An installment sale contract shall set forth all of the following separate items in the following order:

(a) The cash price of the motor vehicle. This amount shall include any taxes, the cash price of agreed upon accessories and installation of the accessories, the cash price of any extended warranty or service contract, and a documentary preparation fee. The documentary preparation fee shall not exceed 5% of the cash price of the motor vehicle or \$160.00, whichever is less. Beginning on January 1, 2005, the administrator shall adjust

the \$160.00 maximum for the documentary preparation fee described in this subdivision every 2 years to reflect the cumulative percentage change in the consumer price index for the 2 immediately preceding calendar years, as determined by the administrator. The administrator shall round the adjustment to the nearest \$10.00 increment to set the fee every 2 years under this subdivision, but shall carry over and use the absolute value to calculate the next 2-year adjustment. As used in this subdivision, “consumer price index” means the United States consumer price index for all urban consumers, U.S. city average, as defined and reported by the United States department of labor, bureau of labor statistics.

(b) The down payment made by the buyer at the time of or before execution of the contract, indicating whether made in cash, or represented by the agreed value of a trade-in motor vehicle or other goods, or both. The amount of cash and the value of any trade-in shall be shown separately. A description that is sufficient for identification of any trade-in shall be shown.

(c) The unpaid cash price balance, which is the difference between the cash price under subdivision (a) and the down payment under subdivision (b).

(d) The cost of any insurance premium or travel emergency benefits pertaining to the operation of the automobile that the seller agrees to extend credit to the buyer to obtain. The installment sale contract shall set forth the term of the insurance and a concise description of the terms of the insurance policy and the travel emergency benefits. If the precise cost of the insurance is not available at the time the contract is signed, an estimated amount, ascertained from the current published applicable manual of a recognized standard insurance rating bureau, may be set forth in the contract. The seller shall, within 25 days after making the installment contract, mail or cause to be mailed to the buyer at his or her address as shown on the installment contract a certificate or policy of insurance and a statement showing the exact cost of the insurance. Each installment sale contract shall contain the following warning, printed prominently in red ink and in 12-point type or larger, directly preceding the notice provided for in section 12(d), enclosed by a continuous heavy line:

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Warning: The insurance afforded hereunder does not cover liability for injury to persons or damage to property of others unless so indicated hereon.

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(e) Other necessary or incidental costs that the seller contracts to pay on behalf of the buyer and for the amount of which the seller agrees to extend credit to the buyer as authorized by this act. The contract shall contain an itemization of the nature and amount of the costs.

(f) The principal amount financed, which is the total of the amounts described in subdivisions (c), (d), and (e).

(g) The finance charge, which is the consideration in excess of the total of the cash price under subdivision (a), excluding the amounts described in subdivisions (d) and (e).

(h) The time balance, which is the total of the amounts described in subdivisions (f) and (g) and represents the total obligation of the buyer that he or she agrees to pay in 2 or more scheduled payments.

(i) The payment schedule, which shall state the number of payments, the amount of the payments, and the time of the payments required to liquidate the time balance.

(3) An installment sale contract shall state clearly any collateral security taken for the buyer’s obligation under the contract.

(4) An installment sale contract shall contain a summary notice of the buyer's principal legal rights respecting prepayment of the contract and rebate of the finance charge and reinstatement of the contract in the event of repossession.

(5) An installment sale contract shall contain specific provisions as to the buyer's liability respecting default charges, repossession, and sale of the motor vehicle in case of default or other breach of contract, and respecting the collateral security, if any.

#### **492.118 Finance charge on installment sale contract; maximum rate; computation.**

Sec. 18. (1) A seller licensed under this act may charge the buyer a finance charge on any installment sale contract covering the retail sale of a motor vehicle in this state. The finance charge shall not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) The seller shall compute the finance charge on the principal amount financed as determined under section 13(2)(f).

(3) The seller shall compute the finance charge at the annual rates permitted by subsection (1) on installment sale contracts that are payable by installment payments, extending for a period of 1 year. On installment sale contracts providing for installment payments extending for a period that is less than or greater than 1 year, the seller shall compute the finance charge proportionately. If an installment sale contract provides for payment other than in equal successive weekly, semimonthly, or monthly installments, the finance charge may be at a rate that will provide the same annual percentage rate as is permitted on monthly payment contracts considering the schedule of payments in the contract. The seller shall disclose the annual percentage rate of the installment sales contract in accordance with disclosure requirements of the 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 1648, and 1661 to 1667e, and the regulations promulgated under the truth in lending act.

(4) The seller may compute the finance charge on the basis of a full month for a fractional month period in excess of 10 days.

(5) A seller may charge a minimum finance charge of \$15.00 on an installment sale contract in which the finance charge, when computed at the rates indicated, results in a total charge of less than \$15.00.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 700]**

**(HB 6490)**

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation

of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending section 2567a (MCL 600.2567a), as added by 1990 PA 346.

*The People of the State of Michigan enact:*

**600.2567a Fee for recording instrument; amount and payment; additional to other fees; remittance and disposition of fees; limitation; applicability of section; “county plan” defined.**

Sec. 2567a. (1) Except as otherwise provided in subsection (4), the county register of deeds shall collect a fee for recording any instrument. Before January 1, 2013, the fee shall be \$4.00. Beginning January 1, 2013, the fee shall be \$2.00. The fee shall be paid when the instrument is left for record.

(2) The fee required by this section is in addition to any fees required in section 2567 or fees or charges otherwise required by law for the recording of instruments.

(3) The fees collected under this section shall be remitted to the state treasurer quarterly, and shall be deposited by the state treasurer in the survey and remonumentation fund created in section 11 of the state survey and remonumentation act, 1990 PA 345, MCL 54.271, except that a county may retain not more than 1-1/2% of each fee collected under subsection (1) to cover the costs of administering this section.

(4) If, pursuant to a contract under section 8(5) of the state survey and remonumentation act, 1990 PA 345, MCL 54.268, a county has expended funds to expedite the completion of its county plan, the county may apply not more than 50% of its annual grant revenue under section 12(1)(a) of the state survey and remonumentation act, 1990 PA 345, MCL 54.272, to reimburse itself for these expenditures, until these expenditures have been fully reimbursed.

(5) This section does not apply to any of the following:

(a) An agency of the state when filing or recording any instrument with the county register of deeds under either of the following:

(i) The state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687.

(ii) Section 67a of the general property tax act, 1893 PA 206, MCL 211.67a.

(b) An individual or any public or private legal entity when recording a lien or discharge of a lien with the county register of deeds under section 15 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

(c) An agency of the federal government when filing or recording any instrument with the county register of deeds under the uniform federal lien registration act, 1983 PA 102, MCL 211.661 to 211.668.

(d) An individual or any public or private legal entity when recording any instrument with the county register of deeds under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(e) A foreclosing governmental unit when recording any instrument required under sections 78 to 78p of the general property tax act, 1893 PA 206, MCL 211.78 to 211.78p.

(6) As used in this section, “county plan” means a monumentation and remonumentation plan under section 8 of the state survey and remonumentation act, 1990 PA 345, MCL 54.268.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

**[No. 701]****(HB 5742)**

AN ACT to amend 1921 PA 302, entitled “An act to provide for the supervision of private, denominational and parochial schools; to provide the manner of securing funds in payment of the expense of such supervision; to provide the qualifications of the teachers in such schools; and to provide for the endorsement of the provisions hereof,” by amending section 1 (MCL 388.551).

*The People of the State of Michigan enact:*

**388.551 Private, denominational, and parochial schools; supervision by superintendent of public instruction; assistants; compensation; removal; intent of act.**

Sec. 1. The superintendent of public instruction has supervision of all the private, denominational, and parochial schools of this state in such matters and manner as provided in this act. The superintendent of public instruction shall employ assistants and employees as may be necessary to comply with the provisions of this act. The number of assistants and employees is subject to the approval of the state administrative board. The salaries and expenses shall be paid by the state treasurer from the fund designated in this act at the time and in the manner as other state officers and employees are paid. The superintendent of public instruction may remove any appointee under this act at any time that the superintendent of public instruction considers advisable. It is the intent of this act that the sanitary conditions of the schools subject to this act, the courses of study in those schools, and the qualifications of the teachers in those schools shall be of the same standard as provided by the general school laws of this state.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 702]****(HB 5721)**

AN ACT to amend 1893 PA 123, entitled “An act to provide for the maintenance, supervision and government of the Michigan school for the blind, and to repeal all acts and parts of acts inconsistent herewith,” by repealing sections 9 and 10 (MCL 393.109 and 393.110).

*The People of the State of Michigan enact:*

**Repeal of §§ 393.109 and 393.110.**

Enacting section 1. Sections 9 and 10 of 1893 PA 123, MCL 393.109 and 393.110, are repealed.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

**[No. 703]****(HB 5720)**

AN ACT to amend 1893 PA 116, entitled “An act to provide for the maintenance, management and control, of the Michigan school for the deaf, and to repeal all laws inconsistent herewith,” by repealing sections 10, 12, 14, and 16 (MCL 393.60, 393.62, 393.64, and 393.66).

*The People of the State of Michigan enact:*

**Repeal of §§ 393.60, 393.62, 393.64, and 393.66.**

Enacting section 1. Sections 10, 12, 14, and 16 of 1893 PA 116, MCL 393.60, 393.62, 393.64, and 393.66, are repealed.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 704]****(HB 5719)**

AN ACT to amend 1942 (1st Ex Sess) PA 16, entitled “An act to designate the superintendent of public instruction as the state agency to apply to and receive from the federal government, or any agency thereof, grants in aid of the public schools of this state and educational activities in this state; and to provide for the disbursement thereof,” by amending section 3 (MCL 388.803).

*The People of the State of Michigan enact:*

**388.803 Deposit and disbursement of funds received.**

Sec. 3. A grant or grants received by this state from the federal government under this act shall be paid in to the state treasurer. Disbursement of the funds from the state treasury shall be by warrant of the state treasurer.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 705]****(HB 5716)**

AN ACT to amend 1941 PA 230, entitled “An act to authorize the auditor general of the state of Michigan to sell or lease real estate, the title to which is vested in the state of Michigan by grant, devise or gift, or in payment for care or medical treatment rendered in any Michigan state hospital or institution,” by amending the title and sections 1, 2, 3, and 4 (MCL 322.1, 322.2, 322.3, and 322.4).

*The People of the State of Michigan enact:*

TITLE

An act to authorize the state treasurer to sell or lease certain real estate; and to prescribe certain requirements for that sale or lease.

**322.1 Real estate acquired by state; sale or lease; authorization.**

Sec. 1. Whenever the title to any real estate has vested in this state by grant, devise or gift, or in payment for care or medical treatment rendered in any state hospital or institution, the real estate or any part thereof may be sold or leased by the state treasurer with the approval of the state administrative board.

**322.2 Appraisal of real estate; sale to highest bidder; notice.**

Sec. 2. The state treasurer shall cause real estate described in section 1 to be appraised by 2 disinterested and qualified appraisers who are residents of the county in which the real estate is located, and then shall solicit and receive bids on the real estate. The real estate shall be sold to the highest bidder but in no case at less than the appraised value. However, the real estate shall not be sold until advertisement offering the property for sale has been published at least 3 successive weeks before the sale in a newspaper printed and circulated in the county in which the real estate is situated. If there is no newspaper printed and circulated in the county where the real estate is situated, then the notice shall be published in a newspaper printed and circulated nearest to the site of the real estate.

**322.3 Terms of sale; credit; limitation; security.**

Sec. 3. Upon sale of real estate under this act, the state treasurer may give such length of credit, not to exceed 5 years, and for not more than 3/4 of the purchase money, as the state treasurer considers best calculated to produce the highest price, and shall require the money for which credit is given to be secured by a mortgage on the real estate sold.

**322.4 Notice of sale; deed of conveyance; documents attached; quitclaim deed.**

Sec. 4. An affidavit of the publisher of the notice of sale required under section 2 shall be attached to the deed conveying real estate under this act, together with a copy of the notice of sale, showing the dates of publication of the notice. A copy of the resolution of the state administrative board approving the sale, certified by the secretary of the state administrative board, shall also be attached to the deed of conveyance. The conveyance of the property shall be by quitclaim deed, executed by the state treasurer for and on behalf of the people of this state.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 706]**

**(SB 115)**

AN ACT to amend 1846 RS 14, entitled "Of county officers," by amending section 60 (MCL 49.160).

*The People of the State of Michigan enact:*

**49.160 Special prosecuting attorney; appointment; powers and duties; assistant prosecuting attorney.**

Sec. 60. (1) If the prosecuting attorney of a county determines himself or herself to be disqualified by reason of conflict of interest or is otherwise unable to attend to the duties of the office, he or she shall file with the attorney general a petition stating the conflict or the reason he or she is unable to serve and requesting the appointment of a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.

(2) If the attorney general determines that a prosecuting attorney is disqualified or otherwise unable to serve, the attorney general may elect to proceed in the matter or may appoint a prosecuting attorney or assistant prosecuting attorney who consents to the appointment to act as a special prosecuting attorney to perform the duties of the prosecuting attorney in any matter in which the prosecuting attorney is disqualified or until the prosecuting attorney is able to serve.

(3) A special prosecuting attorney appointed under this section is vested with all of the powers of the prosecuting attorney for the purpose of the appointment and during the period of appointment, including the power to investigate and initiate charges. The cost of prosecution, other than personnel costs, in any matter handled by a special prosecuting attorney shall be borne by the office of the prosecuting attorney who has been determined to be disqualified or otherwise unable to serve.

(4) This section does not apply if an assistant prosecuting attorney has been or can be appointed by the prosecuting attorney pursuant to section 18 of chapter 16 of the code of criminal procedure, 1927 PA 175, MCL 776.18, to perform the necessary duties within the constraints of that section or if an assistant prosecuting attorney has been otherwise appointed by the prosecuting attorney pursuant to law and is not disqualified from acting in place of the prosecuting attorney.

**Effective date.**

Enacting section 1. This amendatory act takes effect February 1, 2003.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 707]**

**(SB 1385)**

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

firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 2213 and 2213a (MCL 500.2213 and 500.2213a), section 2213 as amended by 2000 PA 252 and section 2213a as added by 1996 PA 517, and by adding section 2213c.

*The People of the State of Michigan enact:*

**500.2213 Internal formal grievance procedure; approval by commissioner; contents; person authorized to act on behalf of insured or enrollee; section inapplicable to provider complaint and insurance listed in right to independent review act; definitions.**

Sec. 2213. (1) Except as otherwise provided in subsection (4), each insurer and health maintenance organization shall establish an internal formal grievance procedure for approval by the commissioner for persons covered under a policy, certificate, or contract issued under chapter 34, 35, or 36 that includes all of the following:

- (a) Provides for a designated person responsible for administering the grievance system.
- (b) Provides a designated person or telephone number for receiving complaints.
- (c) Ensures full investigation of a complaint.
- (d) Provides for timely notification in plain English to the insured or enrollee as to the progress of an investigation.

(e) Provides an insured or enrollee the right to appear before the board of directors or designated committee or the right to a managerial-level conference to present a grievance.

(f) Provides for notification in plain English to the insured or enrollee of the results of the insurer's or health maintenance organization's investigation and for advisement of the insured's or enrollee's right to review the grievance by the commissioner or by an independent review organization under the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929.

(g) Provides summary data on the number and types of complaints and grievances filed. Beginning April 15, 2001, this summary data for the prior calendar year shall be filed annually with the commissioner on forms provided by the commissioner.

(h) Provides for periodic management and governing body review of the data to assure that appropriate actions have been taken.

(i) Provides for copies of all complaints and responses to be available at the principal office of the insurer or health maintenance organization for inspection by the commissioner for 2 years following the year the complaint was filed.

(j) That when an adverse determination is made, a written statement in plain English containing the reasons for the adverse determination is provided to the insured or enrollee along with written notifications as required under the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929.

(k) That a final determination will be made in writing by the insurer or health maintenance organization not later than 35 calendar days after a formal grievance is submitted in writing by the insured or enrollee. The timing for the 35-calendar-day period may be tolled, however, for any period of time the insured or enrollee is permitted to take under the grievance procedure and for a period of time that shall not exceed 10 business days if the insurer or health maintenance organization has not received requested information from a health care facility or health professional.

(l) That a determination will be made by the insurer or health maintenance organization not later than 72 hours after receipt of an expedited grievance. Within 10 days after receipt of a determination, the insured or enrollee may request a determination of the matter by the commissioner or his or her designee or by an independent review organization under the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929. If the determination by the insurer or health maintenance organization is made orally, the insurer or health maintenance organization shall provide a written confirmation of the determination to the insured or enrollee not later than 2 business days after the oral determination. An expedited grievance under this subdivision applies if a grievance is submitted and a physician, orally or in writing, substantiates that the time frame for a grievance under subdivision (k) would seriously jeopardize the life or health of the insured or enrollee or would jeopardize the insured's or enrollee's ability to regain maximum function.

(m) That the insured or enrollee has the right to a determination of the matter by the commissioner or his or her designee or by an independent review organization under the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929.

(2) An insured or enrollee may authorize in writing any person, including, but not limited to, a physician, to act on his or her behalf at any stage in a grievance proceeding under this section.

(3) This section does not apply to a provider's complaint concerning claims payment, handling, or reimbursement for health care services.

(4) This section does not apply to a policy, certificate, care, coverage, or insurance listed in section 5(2) of the patient's right to independent review act, 2000 PA 251, MCL 550.1905, as not being subject to the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929.

(5) As used in this section:

(a) "Adverse determination" means a determination that an admission, availability of care, continued stay, or other health care service has been reviewed and denied, reduced, or terminated. Failure to respond in a timely manner to a request for a determination constitutes an adverse determination.

(b) "Grievance" means a complaint on behalf of an insured or enrollee submitted by an insured or enrollee concerning any of the following:

(i) The availability, delivery, or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review.

(ii) Benefits or claims payment, handling, or reimbursement for health care services.

(iii) Matters pertaining to the contractual relationship between an insured or enrollee and the insurer or health maintenance organization.

#### **500.2213a Expenses incurred by commissioner; calculation; assessment.**

Sec. 2213a. (1) All actual and necessary expenses incurred by the commissioner under section 2213 shall be calculated by the commissioner by June 30 of each year for the immediately preceding fiscal year. Except as otherwise provided in subsection (2), the commissioner shall divide these expenses among all insurers who issue a policy or certificate under chapter 34 or 36 in this state on a pro rata basis according to the direct written premiums reported in each insurer's annual statement for the immediately preceding calendar year by each of those insurers. This assessment shall be paid within 30 days after receipt of the assessment and is in addition to the regulatory fee provided for in section 224.

(2) This section does not apply to a policy, certificate, care, coverage, or insurance listed in section 5(2) of the patient's right to independent review act, 2000 PA 251, MCL 550.1905, as not being subject to the patient's right to independent review act, 2000 PA 251, MCL 550.1901 to 550.1929.

#### **500.2213c Disability income insurer; internal grievance procedure; establishment; contents; "grievance" defined.**

Sec. 2213c. (1) Each disability income insurer shall establish an internal grievance procedure for persons covered under a disability income policy, certificate, or contract.

(2) An internal grievance procedure under subsection (1) shall include all of the following:

(a) Provide for a designated person responsible for administering the grievance procedure.

(b) Provide for a designated person or telephone number for receiving grievances.

(c) Ensure full investigation of a grievance.

(d) Provide for timely notification to the insured as to the progress of an investigation.

(e) Provide for the insured to have the right to have the grievance reviewed by a managerial-level person or group.

(f) Provide for notification to the insured of the results of the insurer's investigation and, if the insurer upholds its prior determination on the grievance, for advising the insured of his or her right to present the grievance to the commissioner for review.

(g) Provide that a final determination will be made in writing by the insurer not later than 45 calendar days after a grievance is submitted in writing by the insured unless the insurer requires an extension of time to obtain additional information to make a determination with respect to the subject of the grievance. The extension may not exceed 45 days from the end of the initial period unless the initial period is extended due to the insured's failure to submit information necessary to decide the claim on appeal. If the extension is due to an insured's failure to submit information, the period for making the determination shall be tolled until the date the insured responds to the request for additional information.

(h) Provide for copies of all grievances and responses to be available at the principal office of the insurer for inspection by the commissioner for 2 years following the year the grievance was filed.

(3) As used in this section, "grievance" means a written complaint by an insured concerning the payment of benefits under a disability income insurance policy.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 708]**

**(HB 4607)**

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

assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding section 2213d.

*The People of the State of Michigan enact:*

**500.2213d Uniform prescription drug information card or other technology.**

Sec. 2213d. (1) A health benefit plan that provides coverage or administers a plan that provides coverage for prescription drugs or devices and that issues, uses, or requires a card or other technology for prescription claims submission and adjudication shall issue for the plan's insureds, enrollees, members, or participants a uniform prescription drug information card or other technology as provided for in this section.

(2) By July 1, 2003, the commissioner shall develop a uniform prescription drug information card and uniform prescription drug information technology based on the standards and format approved by the national council for prescription drug programs pharmacy ID card implementation guide. The card and technology shall include all of the national council for prescription drug programs standard information required by the health plan for submission and adjudication of claims for prescription drug or device benefits, or at a minimum contain all of the following labeled information:

- (a) The card issuer name or logo on the front of the card.
- (b) The cardholder's name and identification number, which shall be displayed on the front of the card.
- (c) Complete information for electronic transaction claims routing including all of the following:
  - (i) The international identification number labeled as RxBIN.
  - (ii) The processor control number labeled as RxPCN, if required for proper routing of electronic claim transactions for prescription benefits.
  - (iii) The group number labeled as RxGrp, if required for proper routing of electronic claim transactions for prescription benefits.

(d) The name and address of the benefits administrator or other entity responsible for prescription claims submission, adjudication, or pharmacy provider correspondence for prescription benefits claims.

(e) A help desk telephone number that pharmacy providers may call for pharmacy benefit claims assistance.

(3) All information required by subsection (2) that is necessary for submission and adjudication of claims for prescription drug or device benefits, exclusive of information that can be derived from the prescription, shall be included in a clear, readable, and understandable manner on the uniform prescription drug information card or other technology issued by the health plan. The content and format of all information required by subsection (2) shall be in the current content and format required by the health plan for electronic claims routing, submission, and adjudication.

(4) The uniform prescription drug information card or uniform prescription drug information technology developed under this section shall be issued by a health plan upon enrollment and reissued upon any change in coverage that impacts data contained on the card or technology. However, a health plan is not required to issue a new uniform prescription drug information card or other technology more often than once in a calendar year and if a health plan issues stickers or another similar mechanism to the insureds, enrollees, members, or participants to update the cards, then the health plan is not required to issue new uniform prescription drug information cards or other technology more often than once in 3 years from the issuance of the first stickers or other similar mechanisms. This subsection does not prevent a health plan from reissuing updated new uniform prescription drug information cards or other technology on a more frequent basis.

(5) The uniform prescription drug information card or other technology may be used for any and all health insurance coverage. Nothing in this section requires any person issuing, using, or requiring the uniform prescription drug information card or other technology to issue, use, or require a separate card for prescription coverage, provided that the card or other technology can accommodate the information necessary to process the claim as required by subsection (2).

(6) As used in this section, “health plan” means all of the following but does not include a department of community health pharmacy program:

(a) An insurer providing benefits under an expense-incurred hospital, medical, or surgical policy or certificate, but does not include any of the following:

(i) Any policy or certificate that provides coverage only for any of the following:

(A) Vision.

(B) Dental.

(C) Specific diseases.

(D) Accidents.

(E) Credit.

(ii) Hospital indemnity policy or certificate.

(iii) Disability income policy or certificate.

(iv) Coverage issued as a supplement to liability insurance.

(v) Medical payments under automobile, homeowners, or worker’s compensation insurance.

(b) A MEWA regulated under chapter 70 that provides hospital, medical, or surgical benefits.

(c) A health maintenance organization licensed or issued a certificate of authority in this state.

(d) A third party administrator licensed under the third party administrator act, 1984 PA 218, MCL 550.901 to 550.962.

**Effective date.**

Enacting section 1. (1) This amendatory act takes effect January 1, 2003.

(2) This amendatory act applies to all health plan coverages issued or renewed on or after July 1, 2005.

**Legislative intent.**

Enacting section 2. It is the intent of the legislature that pharmacists, by July 1, 2008, be able to obtain information on and submit claims for prescription drug or device benefits by electronic means, including, but not limited to, the internet.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 709]****(HB 6028)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 224a (MCL 750.224a).

*The People of the State of Michigan enact:*

**750.224a Portable device or weapon directing electrical current, impulse, wave, or beam; sale or possession prohibited; exceptions; violation; penalty; definition.**

Sec. 224a. (1) Except as otherwise provided in this section, a person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.

(2) This section does not prohibit any of the following:

(a) The possession and reasonable use of a device that uses electro-muscular disruption technology by a peace officer, an employee of the department of corrections authorized in writing by the director of the department of corrections, probation officer, court officer, bail agent authorized under section 167b, licensed private investigator, aircraft pilot, or aircraft crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties.

(b) Possession solely for the purpose of delivering a device described in subsection (1) to any governmental agency or to a laboratory for testing, with the prior written approval of the governmental agency or law enforcement agency and under conditions determined to be appropriate by that agency.

(3) A manufacturer, authorized importer, or authorized dealer may demonstrate, offer for sale, hold for sale, sell, give, lend, or deliver a device that uses electro-muscular

disruption technology to a person authorized to possess a device that uses electro-muscular disruption technology and may possess a device that uses electro-muscular disruption technology for any of those purposes.

(4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(5) As used in this section, “a device that uses electro-muscular disruption technology” means a device to which all of the following apply:

(a) The device is capable of creating an electro-muscular disruption and is used or intended to be used as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy.

(b) The device contains an identification and tracking system that, when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer.

(c) The manufacturer of the device has a policy of providing the identification and tracking information described in subdivision (b) to a police agency upon written request by that agency.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**[No. 710]**

**(HB 6095)**

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 7212, 7401, 7402, 7403, and 7404 (MCL 333.7212, 333.7401, 333.7402, 333.7403, and 333.7404), section 7212 as amended by 1998 PA 248, sections 7401 and 7403 as amended by 2001 PA 236, and sections 7402 and 7404 as amended by 2000 PA 314.

*The People of the State of Michigan enact:*

### **333.7212 Schedule 1; controlled substances included.**

Sec. 7212. (1) The following controlled substances are included in schedule 1:

(a) Any of the following opiates, including their isomers, esters, the ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetylmethadol	Difenoxin	Noracymethadol
Allylprodine	Dimenoxadol	Norlevorphanol
Alpha-acetylmethadol	Dimepheptanol	Normethadone
Alphameprodine	Dimethylthiambutene	Norpipanone
Alphamethadol	Dioxaphetyl butyrate	Phenadoxone
Benzethidine	Dipipanone	Phenamipromide
Betacetylmethadol	Ethylmethylthiambutene	Phenomorphin
Betameprodine	Etonitazene	Phenoperidine
Betamethadol	Etoxidine	Piritramide
Betaprodine	Furethidine	Proheptazine
Clonitazene	Hydroxypethidine	Properidine
Dextromoramide	Ketobemidone	Propiram
Diamipromide	Levomoramide	Racemoramide
Diethylthiambutene	Levophenacymorphan	Trimeperidine
	Morpheridine	

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine	Drotebanol	Morphine-N-Oxide
Acetyldihydrocodeine	Etorphine	Myorphine
Benzylmorphine	Heroin	Nicocodeine
Codeine methylbromide	Hydromorphenol	Nicomorphine
Codeine-N-Oxide	Methyldesorphine	Normorphine
Cyprenorphine	Methyldihydromorphine	Pholcodine
Desomorphine	Morphine methylbromide	Thebacon
Dihydromorphine	Morphine methylsulfonate	

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

2-Methylamino-1-phenylpropan-1-one

Some trade and other names:

Methcathinone

Cat

Ephedrone

3, 4-methylenedioxy amphetamine

5-methoxy-3, 4-methylenedioxy  
amphetamine

3, 4, 5-trimethoxy amphetamine

Bufotenine

Some trade and other names:

3-(B-dimethylaminoethyl)-5 hydroxyindole

3-(2-dimethylaminoethyl)-5 indolol

N,N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine

Mappine

2, 5-Dimethoxyamphetamine

Some trade or other names:

2, 5-Dimethoxy-a-methylphenethylamine; 2,5-DMA

4-Bromo-2, 5-Dimethoxyamphetamine

Some trade or other names:

4-bromo-2, 5 dimethoxy-a-methylphenethylamine; 4-bromo

2,5-DMA

Diethyltryptamine

Some trade and other names:

N,N-Diethyltryptamine; DET

Dimethyltryptamine

Some trade or other names:

DMT

4-methyl-2, 5-dimethoxyamphetamine

Some trade and other names:

4-methyl-2, 5-dimethoxy-a-methyl-phenethylamine

DOM, STP

4-methoxyamphetamine

Some trade or other names:

4-methoxy-a-methylphenethylamine; paramethoxy amphetamine;

PMA

Ibogaine

Some trade and other names:

7-Ethyl-6,6a,7,8,9,10,12,13

Octahydro-2-methoxy-6,9-methano-5H-

pyrido (1, 2:1, 2 azepero 4, 5-b) indole

tabernanthe iboga

Lysergic acid diethylamide

Marihuana, except as otherwise provided in subsection (2)

Mecloqualone

Mescaline

Peyote

N-ethyl-3 piperidyl benzilate

N-methyl-3 piperidyl benzilate

Psilocybin

Psilocyn

Thiophene analog of phencyclidine

Some trade or other names:

1-(1-(2-thienyl)cyclohexyl) piperidine)

2-thienyl analog of phencyclidine; TPCP

(d) Except as provided in subsection (2), synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity, or both, such as the following, are included in schedule 1:

(i)  $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers.

(ii)  $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.

(iii)  $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and their optical isomers.

(e) Compounds of structures of substances referred to in subdivision (d), regardless of numerical designation of atomic positions, are included.

(f) Gamma-hydroxybutyrate and any isomer, salt, or salt of isomer of gamma-hydroxybutyrate.

Some trade and other names:

Sodium oxybate

4-hydroxybutanoic acid monosodium salt

(g) 3,4-methylenedioxymethamphetamine.

Some trade and other names:

Ecstasy

MDMA

(2) Marihuana and the substances described in subsection (1)(d) and (e) in schedule 1 shall be regulated as provided in schedule 2, if they are dispensed in the manner provided in sections 7335 and 7336.

(3) For purposes of subsection (1), "isomer" includes the optical, position, and geometric isomers.

**333.7401 Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; "plant" defined.**

Sec. 7401. (1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(iv) and:

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$1,000,000.00, or both.

(ii) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony and punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000.00, or both.

(iii) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000.00, or both.

(iv) Which is in an amount less than 50 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(b) Either of the following:

(i) A substance described in section 7212(1)(g) or 7214(c)(ii) is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(ii) Any other controlled substance classified in schedule 1, 2, or 3, except marihuana is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$10,000.00, or both.

(c) A substance classified in schedule 4 is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(d) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows:

(i) If the amount is 45 kilograms or more, or 200 plants or more, by imprisonment for not more than 15 years or a fine of not more than \$10,000,000.00, or both.

(ii) If the amount is 5 kilograms or more but less than 45 kilograms, or 20 plants or more but fewer than 200 plants, by imprisonment for not more than 7 years or a fine of not more than \$500,000.00, or both.

(iii) If the amount is less than 5 kilograms or fewer than 20 plants, by imprisonment for not more than 4 years or a fine of not more than \$20,000.00, or both.

(e) A substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(f) A prescription form or a counterfeit prescription form is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(3) A term of imprisonment imposed under subsection (2)(a) may be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

(4) If an individual was sentenced to lifetime probation under subsection (2)(a)(iv) before the effective date of the amendatory act that added this subsection and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(5) As used in this section, "plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

**333.7402 Creating, manufacturing, delivering, or possessing with intent to deliver counterfeit substance or controlled substance analogue intended for human consumption; applicability of section and certain federal provisions; violations; penalties.**

Sec. 7402. (1) Except as authorized by this article, a person shall not create, manufacture, deliver, or possess with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption. This section does not apply to a

person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. 355. For purposes of this section, section 505 of the federal food, drug, and cosmetic act shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

(2) A person who violates this section as to:

(a) A counterfeit substance classified in schedule 1 or 2 which is either a narcotic drug or a drug described in section 7212(1)(g) or 7214(a)(iv) or (c)(ii), is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(b) Any other counterfeit substance classified in schedule 1, 2, or 3, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(c) A counterfeit substance classified in schedule 4, is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(d) A counterfeit substance classified in schedule 5, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(e) A controlled substance analogue, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$250,000.00, or both.

### **333.7403 Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; discharge from lifetime probation.**

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 that is a narcotic drug or a drug described in section 7214(a)(iv), and:

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$1,000,000.00, or both.

(ii) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000.00, or both.

(iii) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000.00, or both.

(iv) Which is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that substance 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.

(v) Which is in an amount less than 25 grams of any mixture containing that substance 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.

(b) Either of the following:

(i) A substance described in section 7212(1)(g) or 7214(c)(ii) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(ii) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (b)(i), (c), or (d), or a controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(d) Marihuana is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(e) A prescription form is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) If an individual was sentenced to lifetime probation under subsection (2)(a)(iv) before the effective date of the amendatory act that added this subsection and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

### **333.7404 Use of controlled substance or controlled substance analogue; violations; penalties.**

Sec. 7404. (1) A person shall not use a controlled substance or controlled substance analogue unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 as a narcotic drug or a drug described in section 7212(1)(g) or 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

(b) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (c), or (d), or a controlled substance analogue, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5, 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.

(d) Marihuana, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

#### **Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2003.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

**[No. 711]****(HB 6096)**

AN ACT to amend 1927 PA 175, entitled “An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending section 13m of chapter XVII (MCL 777.13m), as added by 2002 PA 30.

*The People of the State of Michigan enact:*

## CHAPTER XVII

**777.13m Applicability of chapter to certain felonies; §§ 333.7341(8) to 333.7410a.**

Sec. 13m. This chapter applies to the following felonies enumerated in chapter 333 of the Michigan Compiled Laws:

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
333.7341(8)	CS	G	Delivery or manufacture of imitation controlled substance	2
333.7401(2)(a)(i)	CS	A	Delivery or manufacture of 1,000 or more grams of certain schedule 1 or 2 controlled substances	Life
333.7401(2)(a)(ii)	CS	A	Delivery or manufacture of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30
333.7401(2)(a)(iii)	CS	B	Delivery or manufacture of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20

333.7401(2)(a)(iv)	CS	D	Delivery or manufacture of less than 50 grams of certain schedule 1 or 2 controlled substances	20
333.7401(2)(b)(i)	CS	B	Delivery or manufacture of methamphetamine or 3, 4-methylenedioxymethamphetamine	20
333.7401(2)(b)(ii)	CS	E	Delivery or manufacture of certain schedule 1, 2, or 3 controlled substances	7
333.7401(2)(c)	CS	F	Delivery or manufacture of schedule 4 controlled substance	4
333.7401(2)(d)(i)	CS	C	Delivery or manufacture of 45 or more kilograms of marijuana	15
333.7401(2)(d)(ii)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7
333.7401(2)(d)(iii)	CS	F	Delivery or manufacture of less than 5 kilograms or 20 plants of marijuana	4
333.7401(2)(e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2
333.7401(2)(f)	CS	D	Delivery or manufacture of an official or counterfeit prescription form	20
333.7401(2)(g)	CS	D	Delivery or manufacture of prescription or counterfeit form (other than official)	7
333.7401a	Person	B	Delivering a controlled substance or GBL with intent to commit criminal sexual conduct	20
333.7401b(3)(a)	CS	E	Delivery or manufacture of GBL	7
333.7401b(3)(b)	CS	G	Possession of GBL	2
333.7401c(2)(a)	CS	D	Operating or maintaining controlled substance laboratory	10
333.7401c(2)(b)	CS	B	Operating or maintaining controlled substance laboratory in presence of minor	20
333.7401c(2)(c)	CS	B	Operating or maintaining controlled substance laboratory involving hazardous waste	20
333.7401c(2)(d)	CS	B	Operating or maintaining controlled substance laboratory near certain places	20
333.7401c(2)(e)	CS	A	Operating or maintaining controlled substance laboratory involving firearm or other harmful device	25
333.7402(2)(a)	CS	D	Delivery or manufacture of certain imitation controlled substances	10
333.7402(2)(b)	CS	E	Delivery or manufacture of schedule 1, 2, or 3 imitation controlled substance	5

333.7402(2)(c)	CS	F	Delivery or manufacture of imitation schedule 4 controlled substance	4
333.7402(2)(d)	CS	G	Delivery or manufacture of imitation schedule 5 controlled substance	2
333.7402(2)(e)	CS	C	Delivery or manufacture of controlled substance analogue	15
333.7403(2)(a)(i)	CS	A	Possession of 1,000 or more grams of certain schedule 1 or 2 controlled substances	Life
333.7403(2)(a)(ii)	CS	A	Possession of 450 or more but less than 1,000 grams of certain schedule 1 or 2 controlled substances	30
333.7403(2)(a)(iii)	CS	B	Possession of 50 or more but less than 450 grams of certain schedule 1 or 2 controlled substances	20
333.7403(2)(a)(iv)	CS	G	Possession of 25 or more but less than 50 grams of certain schedule 1 or 2 controlled substances	4
333.7403(2)(a)(v)	CS	G	Possession of less than 25 grams of certain schedule 1 or 2 controlled substances	4
333.7403(2)(b)(i)	CS	D	Possession of methamphetamine or 3, 4-methylenedioxymethamphetamine	10
333.7403(2)(b)(ii)	CS	G	Possession of certain schedule 1, 2, 3, or 4 controlled substances or controlled substances analogue	2
333.7403(2)(e)	CS	H	Possession of official prescription form	1
333.7405(a)	CS	G	Controlled substance violations by licensee	2
333.7405(b)	CS	G	Manufacturing or distribution violations by licensee	2
333.7405(c)	CS	G	Refusing lawful inspection	2
333.7405(d)	CS	G	Maintaining drug house	2
333.7407(1)(a)	CS	G	Controlled substance violations by licensee	4
333.7407(1)(b)	CS	G	Use of fictitious, revoked, or suspended license number	4
333.7407(1)(c)	CS	G	Obtaining controlled substance by fraud	4
333.7407(1)(d)	CS	G	False reports under controlled substance article	4
333.7407(1)(e)	CS	G	Possession of counterfeiting implements	4
333.7407(1)(f)	CS	F	Disclosing or obtaining prescription information	4
333.7407(1)(g)	CS	F	Possession of counterfeit prescription form	4

333.7407(2)	CS	G	Refusing to furnish records under controlled substance article	4
333.7410a	CS	G	Controlled substance offense or offense involving GBL in or near a park	2

**Effective date.**

Enacting section 1. This amendatory act takes effect April 1, 2003.

**Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 6095 of the 91st Legislature is enacted into law.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**Compiler's note:** House Bill No. 6095, referred to in enacting section 2, was filed with the Secretary of State December 30, 2002, and became P.A. 2002, No. 710, Eff. Apr. 1, 2003.

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**[No. 712]**
**(HB 6444)**

AN ACT to prescribe the Amber alert of Michigan as the official response to reports of child abductions.

*The People of the State of Michigan enact:*

**28.751 Short title.**

Sec. 1. This act shall be known and may be cited as the “Michigan Amber alert act”.

**28.752 Michigan Amber alert plan; establishment; design.**

Sec. 2. (1) The department of state police shall establish and maintain the Michigan Amber alert plan.

(2) The Michigan Amber alert plan shall be designed to rapidly disseminate useful information in a predetermined manner to radio and television stations within this state.

**28.753 Activation.**

Sec. 3. The Michigan Amber alert plan shall be activated only in accordance with the policies established by the department of state police.

**Conditional effective date.**

Enacting section 1. This act does not take effect unless House Bill No. 6445 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**Compiler's note:** House Bill No. 6445, referred to in enacting section 1, was filed with the Secretary of State December 30, 2002, and became P.A. 2002, No. 713, Imd. Eff. Dec. 30, 2002.

**[No. 713]****(HB 6445)**

AN ACT to provide for the broadcast of information concerning a child abduction on radio and television stations; and to prescribe the content of the information broadcast.

*The People of the State of Michigan enact:*

**28.761 Short title.**

Sec. 1. This act shall be known and may be cited as the “child abduction broadcast act”.

**28.762 Child abduction; broadcast.**

Sec. 2. A radio or television station receiving information concerning a child abduction from the Michigan state police pursuant to the Amber alert of Michigan act may broadcast that information in any manner designed to assist in the location of the abducted child or apprehension of any suspect.

**28.763 Information to be broadcast.**

Sec. 3. The information to be broadcast by a radio or television station under section 2 includes all of the information provided by the Michigan state police.

**28.764 Radio and television stations to which information provided; method.**

Sec. 4. The information shall be provided to predetermined radio and television stations by a method agreed to by the Michigan state police and the Michigan association of broadcasters.

**28.765 Liability; immunity.**

Sec. 5. A radio or television station that accurately broadcasts information concerning a child abduction obtained from the Michigan state police pursuant to the Amber alert of Michigan is immune from any liability based on the broadcast of that information.

**Conditional effective date.**

Enacting section 1. This act does not take effect unless House Bill No. 6444 of the 91st Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 30, 2002.

Filed with Secretary of State December 30, 2002.

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**Compiler's note:** House Bill No. 6444, referred to in enacting section 1, was filed with the Secretary of State December 30, 2002, and became P.A. 2002, No. 712, Imd. Eff. Dec. 30, 2002.

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**[No. 714]****(SB 1127)**

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to

provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending sections 520a, 520b, 520c, 520d, and 520e (MCL 750.520a, 750.520b, 750.520c, 750.520d, and 750.520e), sections 520a and 520e as amended by 2000 PA 505, section 520b as amended by 1983 PA 158, section 520c as amended by 2000 PA 227, and section 520d as amended by 1996 PA 155.

*The People of the State of Michigan enact:*

### **750.520a Definitions.**

Sec. 520a. As used in this chapter:

- (a) “Actor” means a person accused of criminal sexual conduct.
- (b) “Developmental disability” means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
  - (i) It originated before the person became 18 years of age.
  - (ii) It has continued since its origination or can be expected to continue indefinitely.
  - (iii) It constitutes a substantial burden to the impaired person’s ability to perform in society.
  - (iv) It is attributable to 1 or more of the following:
    - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
    - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) “Intimate parts” includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (d) “Mental health professional” means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) “Mental illness” means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (f) “Mentally disabled” means that a person has a mental illness, is mentally retarded, or has a developmental disability.
- (g) “Mentally incapable” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (h) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (i) “Mentally retarded” means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
- (j) “Nonpublic school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.