

(4) For the tax year for which a credit under this section is claimed, compensation, director's fees, or distributive shares paid by the taxpayer to any 1 of the following does not exceed \$135,000.00:

- (a) A shareholder or officer of a corporation other than an S corporation.
- (b) A partner of a partnership or limited liability partnership.
- (c) A shareholder of an S corporation.
- (d) A member of a limited liability corporation.
- (e) An individual who is an owner.
- (5) As used in this section:

(a) "Business income" means business income as defined in section 3 excluding funds received from small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund.

(c) "Qualified start-up business" means a business that meets all of the following criteria as certified annually by the Michigan economic development corporation:

(i) Has fewer than 25 full-time equivalent employees.

(ii) Has sales of less than \$1,000,000.00 in the tax year for which the credit under this section is claimed.

(iii) Research and development make up at least 15% of its expenses in the tax year for which the credit under this section is claimed.

(iv) Is not publicly traded.

(v) Met 1 of the following criteria during 1 of the initial 2 consecutive tax years in which the qualified start-up business had no business income:

(A) During the immediately preceding 7 years was in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19.

(B) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had employees and was liable under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(C) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had not assumed successor liability under section 15(g) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

(d) "Research and development" means qualified research as that term is defined in section 41(d) of the internal revenue code.

This act is ordered to take immediate effect.

Approved May 28, 2004.

Filed with Secretary of State May 28, 2004.

[No. 127]**(HB 5666)**

AN ACT to amend 1979 PA 94, entitled “An act to make appropriations to aid in the support of the public schools and the intermediate school districts of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to supplement the school aid fund by the levy and collection of certain taxes; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts,” by amending section 101 (MCL 388.1701), as amended by 2003 PA 158.

The People of the State of Michigan enact:

388.1701 Eligibility to receive state aid; filing certified and sworn copy of enrollment; failure to file; withholding state aid; falsification; minimum hours of pupil instruction; forfeiture; certification; strikes or teachers’ conferences; rules; hours not counted as pupil instruction; alternative scheduling program for pupils in kindergarten; certification of planned number of hours of pupil instruction; conditions requiring forfeiture; guidelines for providing minimum number of hours of instruction; application; waiver for alternative education program; counting professional development as pupil instruction.

Sec. 101. (1) To be eligible to receive state aid under this act, not later than the fifth Wednesday after the pupil membership count day and not later than the fifth Wednesday after the supplemental count day, each district superintendent through the secretary of the district’s board shall file with the intermediate superintendent a certified and sworn copy of the number of pupils enrolled and in regular daily attendance in the district as of the pupil membership count day and as of the supplemental count day, as applicable, for the current school year. In addition, a district maintaining school during the entire year, as provided under section 1561 of the revised school code, MCL 380.1561, shall file with the intermediate superintendent a certified and sworn copy of the number of pupils enrolled and in regular daily attendance in the district for the current school year pursuant to rules promulgated by the superintendent. Not later than the seventh Wednesday after the pupil membership count day and not later than the seventh Wednesday after the supplemental count day, the intermediate district shall transmit to the center the data filed by each of its constituent districts. If a district fails to file the sworn and certified copy with the intermediate superintendent in a timely manner, as required under this subsection, the intermediate district shall notify the department and state aid due to be distributed under this act shall be withheld from the defaulting district immediately, beginning with the next payment after the failure and continuing with each payment until the district complies with this subsection. If an intermediate district fails to transmit the data in its possession in a timely and accurate manner to the department, as required under this subsection, state aid due to be distributed under this act shall be withheld from the defaulting intermediate district immediately, beginning with the next payment after the failure and continuing with each payment until the intermediate district complies with this subsection. If a district or intermediate district does not comply with this subsection by the end of the fiscal year, the district or intermediate district forfeits the amount withheld. A person who willfully falsifies a figure or statement in the certified and sworn copy of enrollment shall be punished in the manner prescribed by section 161.

(2) To be eligible to receive state aid under this act, not later than the twenty-fourth Wednesday after the pupil membership count day and not later than the twenty-fourth Wednesday after the supplemental count day, an intermediate district shall submit to the center, in a form and manner prescribed by the center, the audited enrollment and attendance data for the pupils of its constituent districts and of the intermediate district. If an intermediate district fails to transmit the audited data as required under this subsection, state aid due to be distributed under this act shall be withheld from the defaulting intermediate district immediately, beginning with the next payment after the failure and continuing with each payment until the intermediate district complies with this subsection. If an intermediate district does not comply with this subsection by the end of the fiscal year, the intermediate district forfeits the amount withheld.

(3) Except as otherwise provided in this section, each district shall provide at least 1,098 hours of pupil instruction. Except as otherwise provided in this act, a district failing to comply with the required minimum hours of pupil instruction under this subsection shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of hours the district was in noncompliance in relation to the required minimum number of hours under this subsection. Not later than August 1, the board of each district shall certify to the department the number of hours of pupil instruction in the previous school year. If the district did not provide at least the required minimum number of hours of pupil instruction under this subsection, the deduction of state aid shall be made in the following fiscal year from the first payment of state school aid. A district is not subject to forfeiture of funds under this subsection for a fiscal year in which a forfeiture was already imposed under subsection (6). Hours lost because of strikes or teachers' conferences shall not be counted as days or hours of pupil instruction. A district not having at least 75% of the district's membership in attendance on any day of pupil instruction shall receive state aid in that proportion of 1/180 that the actual percent of attendance bears to the specified percentage. The superintendent shall promulgate rules for the implementation of this subsection.

(4) Except as otherwise provided in this subsection, the first 30 hours for which pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, or health conditions as defined by the city, county, or state health authorities, shall be counted as hours of pupil instruction. In addition, for 2003-2004 only, the department shall count as hours of pupil instruction not more than 20 additional hours for which pupil instruction was not provided in a school in a district due to structural roof and truss damage that required the school to be closed. Beginning in 2004-2005, the department shall count as hours of pupil instruction for a fiscal year not more than 30 additional hours for which pupil instruction is not provided in a district after April 1 of the applicable school year due to unusual and extenuating occurrences resulting from conditions not within the control of school authorities such as those conditions described in this subsection. Subsequent such hours shall not be counted as hours of pupil instruction.

(5) A district shall not forfeit part of its state aid appropriation because it adopts or has in existence an alternative scheduling program for pupils in kindergarten if the program provides at least the number of hours required under subsection (3) for a full-time equated membership for a pupil in kindergarten as provided under section 6(4).

(6) Not later than April 15 of each fiscal year, the board of each district shall certify to the department the planned number of hours of pupil instruction in the district for the school year ending in the fiscal year. In addition to any other penalty or forfeiture under this section, if at any time the department determines that 1 or more of the following has occurred in a district, the district shall forfeit in the current fiscal year beginning in the

next payment to be calculated by the department a proportion of the funds due to the district under this act that is equal to the proportion below the required minimum number of hours of pupil instruction under subsection (3), as specified in the following:

(a) The district fails to operate its schools for at least the required minimum number of hours of pupil instruction under subsection (3) in a school year, including hours counted under subsection (4).

(b) The board of the district takes formal action not to operate its schools for at least the required minimum number of hours of pupil instruction under subsection (3) in a school year, including hours counted under subsection (4).

(7) In providing the minimum number of hours of pupil instruction required under subsection (3), a district shall use the following guidelines, and a district shall maintain records to substantiate its compliance with the following guidelines:

(a) Except as otherwise provided in this subsection, a pupil must be scheduled for at least the required minimum number of hours of instruction, excluding study halls, or at least the sum of 90 hours plus the required minimum number of hours of instruction, including up to 2 study halls.

(b) The time a pupil is assigned to any tutorial activity in a block schedule may be considered instructional time, unless that time is determined in an audit to be a study hall period.

(c) A pupil in grades 9 to 12 for whom a reduced schedule is determined to be in the individual pupil's best educational interest must be scheduled for a number of hours equal to at least 80% of the required minimum number of hours of pupil instruction to be considered a full-time equivalent pupil.

(d) If a pupil in grades 9 to 12 who is enrolled in a cooperative education program or a special education pupil cannot receive the required minimum number of hours of pupil instruction solely because of travel time between instructional sites during the school day, that travel time, up to a maximum of 3 hours per school week, shall be considered to be pupil instruction time for the purpose of determining whether the pupil is receiving the required minimum number of hours of pupil instruction. However, if a district demonstrates to the satisfaction of the department that the travel time limitation under this subdivision would create undue costs or hardship to the district, the department may consider more travel time to be pupil instruction time for this purpose.

(8) The department shall apply the guidelines under subsection (7) in calculating the full-time equivalency of pupils.

(9) Upon application by the district for a particular fiscal year, the superintendent may waive for a district the minimum number of hours of pupil instruction requirement of subsection (3) for a department-approved alternative education program. If a district applies for and receives a waiver under this subsection and complies with the terms of the waiver, for the fiscal year covered by the waiver the district is not subject to forfeiture under this section for the specific program covered by the waiver.

(10) A district may count up to 51 hours of professional development for teachers, including the 5 hours of online professional development provided by the Michigan virtual university under section 98, as hours of pupil instruction. A district that elects to use this exception shall notify the department of its election.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

[No. 128]**(HB 5105)**

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 529, 529a, and 530 (MCL 750.529, 750.529a, and 750.530), section 529a as added by 1994 PA 191.

The People of the State of Michigan enact:

750.529 Use or possession of dangerous weapon; aggravated assault; penalty.

Sec. 529. A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

750.529a Carjacking; felony; penalty; “in the course of committing a larceny of a motor vehicle” defined; consecutive sentence.

Sec. 529a. (1) A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

(2) As used in this section, “in the course of committing a larceny of a motor vehicle” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

(3) A sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction.

750.530 Larceny of money or other property; felony; penalty; “in the course of committing a larceny” defined.

Sec. 530. (1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

Effective date.

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

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

[No. 129]**(SB 221)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending sections 43510 and 43516 (MCL 324.43510 and 324.43516), section 43510 as amended by 1996 PA 585 and section 43516 as added by 1995 PA 57.

The People of the State of Michigan enact:

324.43510 Carrying or transporting firearm, slingshot, bow and arrow, crossbow or trap; license required; exception; applicability to taking of wild animal.

Sec. 43510. (1) Subject to subsection (2), a person shall not carry or transport a firearm, slingshot, bow and arrow, crossbow, or a trap while in any area frequented by wild animals unless that person has in his or her possession a license as required under this part.

(2) This act or a rule promulgated or order issued by the department or the commission under this act shall not be construed to prohibit a person from transporting a pistol or carrying a loaded pistol, whether concealed or not, if either of the following applies:

(a) The person has in his or her possession a license to carry a concealed pistol under 1927 PA 372, MCL 28.421 to 28.435.

(b) The person is authorized under the circumstances to carry a concealed pistol without obtaining a license to carry a concealed pistol under 1927 PA 372, MCL 28.421 to 28.435, as provided for under any of the following:

(i) Section 12a of 1927 PA 372, MCL 28.432a.

(ii) Section 227, 227a, 231, or 231a of the Michigan penal code, 1931 PA 328, MCL 750.227, 750.227a, 750.231, and 750.231a.

(3) Subsection (2) does not authorize an individual to take or attempt to take a wild animal except as provided by law.

324.43516 Carrying license; exhibiting license on demand; firearm deer license with unused kill tag; exhibiting tag on request.

Sec. 43516. (1) A person who has been issued a hunting, fishing, or fur harvester’s license, when hunting, fishing, or trapping or, subject to section 43510(2), in the possession

of firearms or other hunting, fishing, or trapping apparatus in an area frequented by wild animals or fish, shall carry the license and shall exhibit the license upon the demand of a conservation officer, a law enforcement officer, or the owner or occupant of the land.

(2) Subject to section 43510(2), a person shall not carry or possess afield a shotgun with buckshot, slug loads, or ball loads; a bow and arrow; a muzzle-loading rifle or black powder handgun; or a centerfire handgun or centerfire rifle during firearm deer season unless that person has a valid firearm deer license, with an unused kill tag, if issued, issued in his or her name. The person shall exhibit an unused kill tag, if issued, upon the request of a conservation officer, a law enforcement officer, or the owner or occupant of the land.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4867 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

Compiler's note: House Bill No. 4867, referred to in enacting section 1, was filed with the Secretary of State June 3, 2004, and became P.A. 2004, No. 130, Imd. Eff. June 3, 2004.

[No. 130]

(HB 4867)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 504 (MCL 324.504), as amended by 1996 PA 171.

The People of the State of Michigan enact:

324.504 Department of natural resources; rules for protection of lands and property; certain rules prohibited; orders; violation as civil infraction; fine.

Sec. 504. (1) The department shall promulgate rules for the protection of the lands and property under its control against wrongful use or occupancy as will ensure the carrying out of the intent of this part to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation, destruction, or any other improper use or occupancy.

(2) This section does not allow the department to promulgate a rule that applies to commercial fishing except as otherwise provided by law.

(3) The department shall not promulgate or enforce a rule that prohibits an individual who is licensed or exempt from licensure under 1927 PA 372, MCL 28.421 to 28.435, from

carrying a pistol in compliance with that act, whether concealed or otherwise, on property under the control of the department.

(4) The department shall issue orders necessary to implement rules promulgated under this section. These orders shall be effective upon posting.

(5) A person who violates a rule promulgated under this section or an order issued under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 221 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

Compiler's note: Senate Bill No. 221, referred to in enacting section 1, was filed with the Secretary of State June 3, 2004, and became P.A. 2004, No. 129, Imd. Eff. June 3, 2004.

[No. 131]

(SB 979)

AN ACT to amend 1990 PA 187, entitled “An act to regulate the equipment, maintenance, operation, and use of school buses and pupil transportation vehicles; to prescribe the qualifications of school bus and pupil transportation vehicle drivers; to prescribe the powers and duties of certain state and local governmental agencies; to create an advisory committee and to prescribe its powers and duties; and to prescribe remedies and penalties,” by amending section 53 (MCL 257.1853), as amended by 2002 PA 647.

The People of the State of Michigan enact:

257.1853 Regular and substitute drivers of school buses; qualifications; records; background check; smoking; alcoholic liquor or controlled substance; third party reimbursement or certain benefits not required.

Sec. 53. (1) All regular drivers and substitute drivers of school buses transporting passengers and pupil transportation vehicles used for the regularly scheduled transportation of passengers to and from home shall, at a minimum, meet the following qualifications:

(a) The requirements of sections 49 and 51.

(b) For a school bus or pupil transportation vehicle operating in intrastate transportation, the annual physical requirements for school bus and pupil transportation vehicle drivers as authorized by the superintendent of public instruction. In meeting these physical requirements, the driver shall be examined by a licensed physician, physicians' assistant, or certified nurse practitioner and shall present the medical certificate to the employer.

(c) An employer who has reason to believe that a driver is not physically qualified to drive may require a physical examination for that driver in accordance with subdivision (b) at more

frequent intervals. If an employer requests a physical examination under this subdivision, the employer shall indicate in writing what physical impairment covered under the requirements of subdivision (b) the driver is to be examined for and shall only be entitled to that portion of the examination results that pertain to that impairment. An examination requested by the employer under this subdivision shall be paid for by the employer.

(d) A copy of the medical certificate for a driver shall be carried by that driver while he or she is operating a school bus or pupil transportation vehicle.

(2) A record of each employed school bus or pupil transportation vehicle driver, including a copy of his or her medical certificate, department of education certification, driver license, certificate of road test application for employment, and any other information that relates to driver qualification or ability to safely drive a school bus or pupil transportation vehicle, shall be maintained in the employer's administrative office.

(3) A school shall submit transportation safety related documents, such as driver qualification records, and vehicle maintenance records upon request for inspection and copying to motor carrier officers or vehicle inspectors of the department of state police.

(4) Upon receipt of an application from a person for the position of school bus driver or pupil transportation vehicle driver, a school shall request from the department of state police a background check to determine whether the person was convicted of any of the following offenses:

(a) Criminal sexual conduct in any degree.

(b) Assault with intent to commit criminal sexual conduct.

(c) An attempt to commit criminal sexual conduct in any degree.

(d) Felonious assault on a child, child abuse, or cruelty, torture, or indecent exposure involving a child.

(e) A violation of section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(5) A person shall not smoke on a school bus or pupil transportation vehicle.

(6) A person shall not possess or consume alcoholic liquor or a controlled substance on a school bus or pupil transportation vehicle.

(7) This section does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

[No. 132]

(SB 982)

AN ACT to amend 1966 PA 298, entitled "An act to establish and provide a board of civil service commissioners for sheriffs' departments in certain counties; to provide a civil service system based upon examination and investigation as to merit, efficiency and fitness for appointment, employment and promotion of all officers and men or women appointed in the departments; to regulate the transfer, reinstatement, suspension and discharge of said officers; to provide for referendums; and to prescribe penalties and provide remedies," by amending section 10 (MCL 51.360).

The People of the State of Michigan enact:

51.360 Civil service examination; application; filing; contents; forms; certificates; grounds for refusing to examine or certify applicant; hearing; review; physical examination; age; residence; reinstatement.

Sec. 10. (1) The civil service commission shall require an individual applying for admission to an examination provided for under this act or under the rules of the commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation all of the following:

- (a) Full name, residence, and post office address.
- (b) Citizenship, age, and the place and date of birth.
- (c) Health and physical capacity for the position for which the applicant is applying.

(d) Each residence and business or place of employment for not less than the previous 3 years. The commission shall establish educational requirements, but the requirements shall not call for less than an eighth grade education.

(f) Other information as may reasonably and legally be requested regarding the applicant's qualifications and fitness for the position for which the applicant is applying.

(2) Blank forms for applications shall be furnished by the commission, without charge, to all persons requesting an application. The commission may require, in connection with the application, certificates of citizens, physicians, or others having knowledge of the applicant as the good of the service requires. The commission may refuse to examine an applicant or, after examination, to certify as eligible an applicant who falls under any of the following disqualifications:

(a) Lacks any of the established preliminary requirements for the examination or position of employment for which the applicant applied.

(b) Is so physically disabled as to be rendered unfit for the performance of the duties of the position to which the applicant seeks appointment.

(c) Is a habitual user of intoxicating liquors or an illegal user of 1 or more controlled substances.

(d) Has been found guilty of a crime.

(e) Has been dismissed from the public service for delinquency or misconduct.

(f) Has made a false statement of any material fact, or practiced or attempted to practice a deception or fraud in the application, in the examination, or in securing eligibility.

(g) Refuses to comply with the rules and regulations of the commission.

(3) If any applicant feels aggrieved by the action of the commission in refusing to examine the applicant or, after an examination, to certify the applicant as eligible, the commission, at the request of the applicant, shall appoint a time and a place for a public hearing, at which time the applicant may appear, personally or with counsel, and the commission shall then review its refusal of examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by the applicant. After review, the commission shall file the testimony taken in its records and shall again make a decision, which decision shall be reviewable on writ of certiorari.

(4) Prior to taking the examination, all applicants for any position in the department shall undergo a physical examination, which may be performed by a licensed physician, a

licensed physician's assistant, or a certified nurse practitioner but shall be conducted under the supervision of a commission composed of at least 2 physicians appointed to the commission by the board of supervisors. The commission shall certify that an applicant is free from any bodily or mental defects, deformity, or diseases that might incapacitate the applicant from the performance of the duties of the position desired. Applications will not be accepted if the person applying is less than 18 years of age and has not been a resident of this state for at least 1 year prior to the application for any position in the department. If any applicant has formerly served in the department of the county to which the application is made for a period of more than 10 years, has resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant within a period of 2 years next preceding the date of his or her application, and is a resident of that county, then that applicant is eligible for reinstatement at the discretion of the civil service commission. The applicant, providing his or her former term of service so justifies, may be reappointed to the department without examination other than a physical examination. If an applicant is reinstated to the department, the applicant shall be the lowest in rank in the department next above the probationers of the department. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

[No. 133]

(SB 985)

AN ACT to amend 1935 PA 78, entitled "An act to establish and provide a board of civil service commissioners in cities, villages, and municipalities having full-time paid members in the fire or police departments, or both; to provide a civil service system based upon examination and investigation as to merit, efficiency, and fitness for appointment, employment, and promotion of all full-time paid members appointed in the fire and police departments and respective cities, villages, and municipalities; to regulate the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 10 (MCL 38.510), as amended by 1986 PA 155.

The People of the State of Michigan enact:

38.510 Application for examination; filing; contents; forms; refusal to examine or certify applicant; public hearing for aggrieved applicant; review; testimony; decision; physical examination; certification; age requirement; reinstatement or reappointment; rank.

Sec. 10. (1) The civil service commission in each city, village, or municipality shall require an individual applying for admission to an examination provided for under this act or under the rules and regulations of the commission to file in its office, within a reasonable time before the proposed examination, a formal application in which the applicant shall state under oath or affirmation all of the following:

- (a) Full name, residence, and post-office address.

(b) United States citizenship.

(c) Attainment of the age of majority.

(d) Health and physical capacity for the position for which the applicant is applying.

(e) Each residence and business or place of employment for not less than the 3 previous years. The commission shall establish educational requirements, but the requirements shall not call for less than an eighth grade education. After acceptance by the civil service commission, the applicant shall be governed as to residence by the city or village charter.

(f) Other information as may reasonably and legally be requested regarding the applicant's qualifications and fitness for the position for which the applicant is applying.

(2) Blank forms for applications shall be furnished by the commission, without charge, to all individuals requesting applications. The commission may require, in connection with an application, certificates of citizens, physicians, or others having knowledge of the applicant as the good of the service requires. The commission may refuse to examine an applicant or, after examination, to certify as eligible, an applicant who falls under any of the following disqualifications:

(a) Lacks any of the established preliminary requirements for the examination or position of employment for which the applicant applied.

(b) Is so disabled as to be rendered unfit for the performance of the duties of the position to which the applicant seeks appointment.

(c) Is a habitual user of intoxicating liquors or an illegal user of 1 or more controlled substances.

(d) Has been found guilty of any felony.

(e) Has been dismissed from the public service for delinquency or misconduct.

(f) Has made a false statement of a material fact or practiced or attempted to practice a deception or fraud in the application, in the examination, or in securing eligibility.

(g) Refuses to comply with the rules and regulations of the commission.

(3) If an applicant feels aggrieved by the action of the commission in refusing to examine the applicant or, after an examination, to certify the applicant as eligible, the commission, at the request of the applicant, shall appoint a time and a place for a public hearing at which time the applicant may appear, personally or with counsel, and the commission shall then review its refusal of examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by the applicant. After review, the commission shall file the testimony taken in its records and shall again make a decision, which decision shall be final.

(4) Before appointment, all applicants for a position in the fire or police department shall undergo a physical examination, which may be performed by a licensed physician, a licensed physician's assistant, or a certified nurse practitioner, to determine that an applicant is free from defects, deformity, or diseases that might incapacitate the applicant from the performance of the duties of the position desired. Applications will not be accepted if the person applying has not attained the age of majority under state law. If an applicant has formerly served upon the fire or police department of the city, village, or municipality to which application is made and has resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant, within a period of 2 years next preceding the date of the application, and is a resident of the city, village, or municipality or the area authorized by city charter, then the applicant shall be eligible for reinstatement at the discretion of a civil service commis-

sion. The applicant, providing the former term of service justifies, may be reappointed to the fire or police department without examination other than a physical examination. If an applicant is reinstated to the fire or police department, the applicant shall be the lowest in rank in the department next above the probationers of the department. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

This act is ordered to take immediate effect.

Approved June 3, 2004.

Filed with Secretary of State June 3, 2004.

[No. 134]

(HB 5500)

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 1113 (MCL 436.2113), as amended by 1998 PA 416, and by adding section 1114.

The People of the State of Michigan enact:

436.2113 Selling at retail, giving away, furnishing, or buying spirits or mixed spirit drink on Sunday; sale of spirits or mixed spirit drink for consumption on or off premises on Sunday; resolution; petition; election; form of ballot; voting; violation as misdemeanor; exception; selling and buying alcoholic liquor from December 24 to 26; legislative bodies authorized to prohibit sale of alcoholic liquor on certain days.

Sec. 1113. (1) Except as provided in subsection (2), (3), or (5), a licensee enumerated under section 525 or any other person shall not sell at retail, give away, or furnish, and a person shall not knowingly and willfully buy, spirits or mixed spirit drink between the hours of 2 a.m. and 12 midnight on Sunday. If January 1 falls on Sunday, the hours may be extended to 4 a.m.

(2) If the legislative body of a county has authorized the sale of spirits and mixed spirit drink for consumption on the premises on Sunday, by resolution approved by a majority of the legislative body voting on that resolution, the spirits and mixed spirit drink may be

sold after 12 noon, EST, in an establishment licensed under this act in which the gross receipts derived from the sale of food and other goods and services exceed 50% of the total gross receipts. With respect to an action taken by the legislative body or if the legislative body fails to act, a petition may be filed with the county clerk requesting the submission of the question of the sale of spirits and mixed spirit drink for consumption on the premises in addition to beer and wine on Sunday. The petition shall be signed by a number of the registered and qualified electors of the county that is not less than 8% of the total number of votes cast for all candidates for the office of secretary of state in the county at the last general election held for that purpose. The question shall not be submitted to the electors of a county more than once every 4 years. The county clerk shall submit the question at the next regular state election held in the county if the petitions are filed not less than 60 days before the election. The question of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, on Sunday shall be submitted by ballot in substantially the following form:

“Shall the sale of spirits and mixed spirit drink for consumption on the premises be permitted on Sunday in an establishment licensed under the Michigan liquor control code of 1998 in which the gross receipts derived from the sale of food or other goods and services exceed 50% of the total gross receipts within the county of under the provisions of the law governing the sale of spirits and mixed spirit drink for consumption?

Yes

No”.

(3) If the legislative body of a county has authorized the sale of spirits and mixed spirit drink for consumption off the premises on Sunday by resolution approved by a majority of the legislative body voting on the resolution, spirits and mixed spirit drink may be sold after 12 noon, EST, in a retail establishment licensed under this act. With respect to an action taken by the legislative body or if the legislative body fails to act, a petition may be filed with the county clerk requesting the submission of the question of the sale of spirits and mixed spirit drink for consumption off the premises, in addition to beer and wine, in a retail establishment licensed under this act on Sunday. The petition shall be signed by a number of the registered and qualified electors of the county that is not less than 8% of the total number of votes cast for all candidates for the office of secretary of state in the county at the last general election shall not be held for that purpose. The question submitted to the electors of a county more than once every 4 years. The county clerk shall submit the question at the next regular state election held in the county if the petitions are filed not less than 60 days before the election. The question of the sale of spirits and mixed spirit drink for consumption off the premises, in addition to beer and wine, in a retail establishment licensed under this act on Sunday shall be submitted by ballot in substantially the following form:

“Shall the sale of spirits and mixed spirit drink for consumption off the premises be permitted on Sunday in a retail establishment licensed under the Michigan liquor control code of 1998 within the county of under the provisions of the law governing the sale of spirits and mixed spirit drink for consumption?

Yes

No”.

(4) Votes on a question submitted under this section shall be taken, counted, and canvassed in the same manner as votes cast in county elections are taken, counted, and canvassed. A ballot shall be furnished by the election commission or similar body of the

county. If a majority of the electors voting at an election vote in favor of the proposal, spirits and mixed spirit drink may be sold in the county under this act for consumption on the premises or by a retail establishment for consumption off the premises, in addition to beer and wine, on Sunday. The sale shall not be permitted in a city, village, or township in which the sale of spirits and mixed spirit drink is prohibited under this act. A violation of this section is a misdemeanor. This section does not apply to spirits and mixed spirit drink served to a bona fide guest in the residence of a person or sold or furnished for medicinal purposes as provided for in this act.

(5) A licensee enumerated under section 525 or any other person shall not sell at retail, and a person shall not knowingly and willfully buy, alcoholic liquor between the hours of 9 p.m. on December 24 and 7 a.m. on December 26. If December 26 falls on Sunday, the hours of closing shall be determined pursuant to this act. The legislative body of a city, village, or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on Sunday or a legal holiday, primary election day, general election day, or municipal election day.

436.2114 Selling, giving away, furnishing, or buying alcoholic liquor or spirits on Sunday.

Sec. 1114. (1) Notwithstanding R 436.1403 and R 436.1503 of the Michigan administrative code and except as otherwise provided under this act or rule of the commission, an on-premises and an off-premises licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day and shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 12 noon, EST, on Sunday. An on-premises and an off-premises licensee shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission that allows the licensee to sell spirits on Sunday between the hours of 12 noon, EST, and 12 midnight.

(2) For purposes of R 436.1403 and R 436.1503 of the Michigan administrative code, 12 noon on Sunday is considered 12 noon on Sunday, EST, for any licensee located in the central time zone.

(3) A reference to the time of day under this act or a rule of the commission includes daylight savings time, when observed.

This act is ordered to take immediate effect.

Approved June 5, 2004.

Filed with Secretary of State June 7, 2004.

[No. 135]

(INITIATION OF LEGISLATION)

An initiation of Legislation to define legal birth and the commencing of legal personhood and rights; and to provide immunity for certain acts.

The People of the State of Michigan enact:

333.1081 Short title.

Sec. 1. This act shall be known and may be cited as the “legal birth definition act”.

333.1082 Findings.

Sec. 2. The following findings are hereby made:

(a) That in *Roe v Wade* the United States supreme court declared that an unborn child is not a person as understood and protected by the constitution, but any born child is a legal person with full constitutional and legal rights.

(b) That in *Roe v Wade* the United States supreme court made no effort to define birth or place any restrictions on the states in defining when a human being is considered born for legal purposes.

(c) That, when any portion of a human being has been vaginally delivered outside his or her mother's body, that portion of the body can only be described as born and the state has a rational basis for defining that human being as born and as a legal person.

(d) That the state has a compelling interest in protecting the life of a born person.

333.1083 Perinate as legally born person; immunity.

Sec. 3. (1) A perinate shall be considered a legally born person for all purposes under the law.

(2) A physician or an individual performing an act, task, or function under the delegatory authority of a physician is immune from criminal, civil, or administrative liability for performing any procedure that results in injury or death of a perinate while completing the delivery of the perinate under any of the following circumstances:

(a) If the perinate is being expelled from the mother's body as a result of a spontaneous abortion.

(b) If in that physician's reasonable medical judgment and in compliance with the applicable standard of practice and care, the procedure was necessary in either of the following circumstances:

(i) To save the life of the mother and every reasonable effort was made to preserve the life of both the mother and the perinate.

(ii) To avert an imminent threat to the physical health of the mother, and any harm to the perinate was incidental to treating the mother and not a known or intended result of the procedure performed.

333.1084 Existing right, privilege, or protection.

Sec. 4. Nothing in this act shall abrogate any existing right, privilege, or protection under criminal or civil law that applies to an embryo or fetus.

333.1085 Definitions.

Sec. 5. As used in this act:

(a) "Anatomical part" means any portion of the anatomy of a human being that has not been severed from the body, but not including the umbilical cord or placenta.

(b) "Imminent threat to the physical health" means a physical condition that if left untreated would result in substantial and irreversible impairment of a major bodily function.

(c) "Live" means demonstrating 1 or more of the following biological functions:

(i) A detectable heartbeat.

(ii) Evidence of breathing.

(iii) Evidence of spontaneous movement.

(iv) Umbilical cord pulsation.

(d) “Perinate” means a live human being at any point after which any anatomical part of the human being is known to have passed beyond the plane of the vaginal introitus until the point of complete expulsion or extraction from the mother’s body.

(e) “Physician” means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

Approved by House of Representatives and Senate June 9, 2004.
Filed with Secretary of State June 9, 2004.

Compiler’s note: This new act was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On June 9, 2004, the initiative petition was approved by an affirmative vote of the majority of the Senators elect and filed with the Secretary of State. On June 9, 2004, the initiative petition was approved by an affirmative vote of the majority of the Members elect of the House of Representatives and filed with the Secretary of State. The Legislature did not vote pursuant to Const 1963, art 4, § 27, to give immediate effect to this enactment.

[No. 136]

(HB 5381)

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,” (MCL 600.101 to 600.9947) by adding chapter 28.

The People of the State of Michigan enact:

CHAPTER 28. JUDGMENT LIENS

600.2801 Definitions.

Sec. 2801. As used in this chapter:

(a) “Judgment” means a final judgment of 1 of the following:

(i) A court of record of this state.

(ii) A United States district court or bankruptcy court.

(iii) A foreign judgment filed under the uniform enforcement of foreign judgments act, 1996 PA 502, MCL 691.1171 to 691.1179.

(b) “Interest in real property” means an interest enumerated in section 6018.

(c) “Judgment lien” means an encumbrance in favor of a judgment creditor against a judgment debtor’s interest in real property, including, but not limited to, after acquired property.

600.2803 Attachment; conditions.

Sec. 2803. A judgment lien attaches to a judgment debtor’s interest in real property if a notice of judgment lien is recorded in accordance with this chapter in the land title records of the register of deeds for the county where the property is located. The judgment lien attaches at the time the notice of judgment lien is recorded or, for after acquired property, at the time the judgment debtor acquires the interest in the property.

600.2805 Notice of judgment lien; certification; service.

Sec. 2805. (1) The clerk of a court that entered a judgment shall certify a notice of judgment lien that has been filed with the court and that includes all of the following:

(a) The case caption and docket number.

(b) The current name and address of the judgment creditor and, if the judgment creditor has an attorney, the attorney.

(c) The name, last 4 digits of the social security or tax identification number, and last known address of the judgment debtor.

(d) The current balance due on the judgment.

(e) The date the judgment was entered, the expiration date of the judgment, and the expiration date of the judgment lien.

(f) The signature of the judgment creditor or the judgment creditor's attorney.

(2) A notice of judgment lien need not include a legal description of the debtor's interest in real property.

(3) Except as provided by subsection (4), a copy of a notice of judgment lien that has been certified under subsection (1) shall be served by certified mail on the judgment debtor at the judgment debtor's last known address. Proof of service shall be filed with the court that issued the judgment.

(4) If the judgment that is the subject of the judgment lien is for \$25,000.00 or more, a copy of a notice of judgment lien that has been certified under subsection (1) shall be personally served on the judgment debtor and proof of service filed with the court that issued the judgment.

600.2807 Property owned as tenants by the entirety; priority; exceptions; sale or refinancing of property subject to judgment lien; limitation on proceeds.

Sec. 2807. (1) A judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both the husband and wife.

(2) With the following exceptions, a judgment lien has priority over a lien recorded with the register of deeds after the notice of judgment lien is recorded:

(a) A purchase money mortgage.

(b) A mortgage to the extent that proceeds of the mortgage are used to pay 1 or more of the following:

(i) Purchase money mortgage debt.

(ii) A subsequent refinancing of purchase money mortgage debt.

(iii) A nonpurchase money mortgage recorded before attachment of the judgment lien.

(c) A lien that secures an advance made under a previously recorded future-advance mortgage.

(d) A lien that has or acquires priority by operation of law.

(e) A claim of lien recorded with the register of deeds under section 111 of the construction lien act, 1980 PA 497, MCL 570.1111.

(f) A lien for unpaid assessments or charges due to a condominium association, homeowners' association, or property owners' association that arises from or pursuant to recorded restrictions that run with the land.

(g) A state or federal tax lien.

(3) If property subject to a judgment lien recorded under this chapter is sold or refinanced, proceeds of the sale or refinancing due to a judgment creditor are limited to the judgment debtor's equity in the property at the time of the sale or refinancing after all liens senior to the judgment lien, property taxes, and costs and fees necessary to close the sale or refinancing are paid or extinguished.

600.2809 Judgment lien; expiration; rerecording; tolling or suspension of time period; judgment lien extinguished.

Sec. 2809. (1) Unless subsection (2) or (3) applies, a judgment lien expires 5 years after the date it is recorded.

(2) Unless subsection (3) applies, if a judgment lien is rerecorded under subsection (4), the judgment lien expires 5 years after the date it is rerecorded.

(3) If the judgment expires before the judgment lien expires, the judgment lien expires on the date that the judgment expires.

(4) A judgment lien may be rerecorded only once. A judgment lien is rerecorded by recording with the register of deeds, not less than 120 days before the initial expiration date under subsection (1), a second notice of judgment lien that has been certified by the clerk of the court that entered the judgment.

(5) The filing of a state or federal insolvency proceeding by the judgment debtor does not toll or suspend the time period in which a judgment lien is effective.

(6) A judgment lien is extinguished when 1 or more of the following are recorded with the office of the register of deeds where the judgment lien is recorded:

(a) A discharge of judgment lien signed by the judgment creditor or the judgment creditor's attorney.

(b) A certified copy of a satisfaction of judgment that has been filed with the court that issued the judgment.

(c) A certified copy of a court order that discharges the judgment lien.

(d) A copy of the judgment debtor's discharge in bankruptcy issued by a United States bankruptcy court and a copy of the bankruptcy schedule listing the judgment debt. This subdivision does not apply if an order entered in the judgment debtor's bankruptcy case determining that the debt is nondischargeable is recorded with the register of deeds.

600.2811 Recording discharge or partial discharge of judgment lien.

Sec. 2811. Within 28 days after payment in full of the amount due on a judgment that is the basis for a judgment lien, the judgment creditor or the judgment creditor's attorney shall record a discharge of judgment lien with the office of the register of deeds where the judgment lien is recorded. If payment on a judgment lien is made from the judgment debtor's equity as described in section 2807(3) and is not payment in full of the amount due on the lien, the judgment creditor or the judgment creditor's attorney shall record a partial discharge of judgment lien for the amount paid.

600.2813 Failure of judgment creditor to record discharge of judgment lien; liability; filing of affidavit by judgment debtor.

Sec. 2813. (1) A judgment creditor that has not recorded a discharge of judgment lien as required by section 2811 shall record the discharge within 14 days after receiving a

written request from the judgment debtor by certified mail. A judgment creditor that fails to comply with this section is liable to the judgment debtor for \$300.00 plus all actual damages and costs sustained by the judgment debtor because of the failure.

(2) If a judgment debtor has paid a judgment in full or has made a partial payment from equity as described in section 2807(3), has sent a request under subsection (1), and is unable, after exercising due diligence, to locate the judgment creditor or the judgment creditor's attorney, the judgment debtor may record an affidavit that complies with this subsection with the register of deeds with whom the judgment lien is recorded. The judgment debtor shall state in the affidavit that the judgment debtor sent a request under subsection (1) to the judgment creditor or the judgment creditor's attorney and shall attach to the affidavit a copy of a written instrument that evidences payment of the judgment and a copy of the receipt for the certified mailing of the request. Recording the affidavit, written instrument, and receipt discharges the judgment lien completely or, if payment is made from the judgment debtor's equity as described in section 2807(3) and is not payment in full of the amount due on the lien, partially to the extent of the amount paid.

600.2815 Person with same or similar name as judgment debtor.

Sec. 2815. (1) A person who has the same or a similar name as a judgment debtor may demand in writing that a judgment creditor that has recorded a judgment lien against the judgment debtor deliver to the person a recordable document that discharges the judgment lien as to property owned by the person. The demand shall be accompanied by reasonable proof that the person is not the judgment debtor and that the property is not subject to the judgment lien.

(2) Within 14 days after receipt of a demand that complies with subsection (1), the judgment creditor shall deliver to the person making the demand a recordable document that discharges the judgment lien as to the property of the person. A judgment creditor that improperly fails to comply with this subsection is liable to the person making the demand for all actual damages and costs sustained by the person because of the failure and is presumed to be liable for at least \$300.00.

(3) If a judgment creditor does not deliver a document as required by subsection (2), the person making the demand may move the court that entered the judgment for an order discharging the judgment lien. The motion shall be served on the judgment creditor. On presentation of evidence satisfactory to the court that the property is not subject to the judgment, the court shall order the judgment creditor to prepare and deliver a recordable discharge of the judgment lien or issue an order discharging the judgment lien. The court shall award reasonable attorney fees to a party that prevails on a motion under this section.

600.2817 Judgment lien; additional and separate from remedy or interest created by law or contract.

Sec. 2817. A judgment lien is in addition to and separate from any other remedy or interest created by law or contract.

600.2819 Foreclosure.

Sec. 2819. There is no right to foreclose a judgment lien created under this chapter. At the time the judgment debtor makes a conveyance, as that term is defined in section 35 of 1846 RS 65, MCL 565.35, of, sells under an executory contract, or refinances the interest in real property that is subject to the judgment lien, the judgment debtor shall pay the

amount due to the judgment creditor, as determined under section 2807(3), to the judgment creditor.

Effective date.

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

This act is ordered to take immediate effect.

Approved June 10, 2004.

Filed with Secretary of State June 10, 2004.

[No. 137]

(HB 5671)

AN ACT to amend 1909 PA 279, entitled “An act to provide for the incorporation of cities and for revising and amending their charters; to provide for certain powers and duties; to provide for the levy and collection of taxes by cities, borrowing of money, and issuance of bonds or other evidences of indebtedness; to validate actions taken, bonds issued, and obligations heretofore incurred; to prescribe penalties and provide remedies; and to repeal acts and parts of acts on specific dates,” by amending section 9 (MCL 117.9), as amended by 1984 PA 352.

The People of the State of Michigan enact:

117.9 Incorporation, consolidation, or change of boundaries; governing law; affected district; petition or resolution for annexation; voting; duties of commission.

Sec. 9. (1) In the event of a conflict between the provisions of this act and 1968 PA 191, MCL 123.1001 to 123.1020, regarding an incorporation or consolidation, the provisions of 1968 PA 191, MCL 123.1001 to 123.1020, shall govern. The district to be affected by the proposed incorporation, consolidation, or change of boundaries is considered to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed. When a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the appropriate agency designated by the state administrative board which holds legal title to the entire area of the land in the territory adjacent to the city to be annexed, is filed with the governing body of the city and township in which the territory is situated, the annexation may be accomplished by the affirmative majority vote of the governing body of the city and the approval of the township board of the township.

(2) Except as provided in subsections (1) and (8), a petition or resolution for annexation of territory shall be filed with the state boundary commission created under 1968 PA 191, MCL 123.1001 to 123.1020. The commission, after determining the validity of the petition or resolution, shall hold a public hearing in or reasonably near the area proposed for annexation. The commission in processing and approving, denying, or revising a petition or resolution for annexation shall have the same powers and duties as provided under 1968 PA 191, MCL 123.1001 to 123.1020, relating to petitions which propose incorporations. In addition to providing notice to property owners located in the area proposed for annexation, the commission shall also give notice of each public hearing held under this

subsection to property owners located within 300 feet of the area proposed for annexation by certified mail not less than 30 days before the date of the public hearing. Not less than 45 days before the date of the public hearing, the local unit of government capable of producing the information required under this section shall provide the state boundary commission with a list of the names and addresses of all persons the commission is required to provide notice to under this subsection. The commission is required to provide notice only to the property owners included on the list provided by the local unit of government as required under this section.

(3) If an annexation is denied by the commission, the commission shall send a certified copy of its order to the clerk of each county, city, village, and township affected.

(4) If an annexation is approved, and if on the date the petition or resolution was filed 100 persons or less resided in the area approved for annexation, the commission's order shall not be subject to a referendum. The commission shall send a certified copy of its order to the clerk of each county, city, village, and township affected and to the secretary of state. The annexation shall be effective on a date set forth in the commission's order.

(5) If an annexation is approved, and if on the date the petition or resolution was filed more than 100 persons resided in the area approved for annexation, the commission shall send a certified copy of its order to the clerk of each county, city, village, and township affected and to the secretary of state. The commission's order shall become final 30 days after the date of the order unless within that 30 days a petition is filed with the commission which contains the signatures of at least 25% of the registered electors residing in the portion of the territory approved for annexation, in the annexing city or in the balance of the township. The commission after verifying the validity of any referendum petition shall order that a referendum on the question of annexation be held in each area from which a valid petition was filed. If a valid petition is not filed within the 30 days or if the majority of the electorate voting on the question in each area in which a referendum was held, voting separately, approve the annexation, the annexation shall be effective on a date set by order of the commission, otherwise the annexation shall not take effect.

(6) The commission shall reject a petition or resolution for annexation of territory that includes all or any part of the territory which was described in any petition or resolution for annexation filed within the preceding 2 years and which was denied by the commission or was defeated in an election under subsection (5).

(7) In addition to the methods for initiating annexation as provided in this act, a petition or resolution as follows may be submitted to the state boundary commission in a form and manner prescribed by the commission:

(a) By resolution of the legislative body of the city to which the area is proposed to be annexed.

(b) By petition by the persons, firms, corporations, the United States government, or the state or any of its subdivisions who collectively hold equitable title as a vendee under a recorded land contract or memorandum of land contract, or record title to 75% or more of the area of the land exclusive of streets in the territory proposed for annexation at the time of filing the petition.

(c) By petition by 20% of the registered electors who reside in the area proposed for annexation.

(8) Where the territory proposed to be annexed to any city is adjacent to the city and consists of a park or vacant property located in a township and owned by the city annexing the territory, and there is no one residing in the territory, the territory may be annexed to the city solely by resolution of the city council of the city. In any case where

the territory proposed to be annexed is adjacent to the city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city, village, or township, the annexation may also be accomplished by the majority vote of the legislative body of the city and the approval of the legislative body of the adjoining city, village, or township. As an alternate method, where there are no qualified electors residing in the territory proposed to be annexed to the city, other than the person or persons petitioning, a petition signed by a person or persons, firms, corporations, the United States government, or the state or any of its subdivisions who collectively hold the equitable title as a vendee under a recorded land contract or memorandum of land contract, or record legal title to more than 1/2 of the area of the land in the territory to be annexed is filed with the city council of the city and with the township board of the township in which the territory is situated, the annexation may be accomplished by the affirmative majority vote of the city council of the city and the approval of the township board of the township. At least 10 days prior to the approval by the township board, the township treasurer shall notify, personally or by registered mail with return receipt demanded, the owners of all real property in the territory to be annexed as shown on the assessment rolls of the township at the last known address on file with the township treasurer. Except as otherwise provided, this section shall not be construed to give any city the authority to attach territory from any other city unless the question relative to the territory has been voted upon by the voters of the entire cities affected where the territory proposed to be annexed is adjacent to a city and consists of property owned by the city or consists of fractional parts of platted subdivision lots, located in an adjoining city.

(9) The provisions of section 14 shall not be applicable to an annexation approved by the commission of part of a township or village to a city except in the event of outstanding bonds or other evidences of indebtedness of the township or village. In such event, the commission shall determine and order an equitable division of assets and liabilities which relate to the bonds or other indebtedness.

(10) The provisions of sections 8 and 8a shall not be applicable to petitions or resolutions filed with the state boundary commission.

(11) After March 31, 1971, and so long as 1968 PA 191, MCL 123.1001 to 123.1020, is in effect, annexation of territory from a township or village to a home rule city shall be as provided in this section and no other means of annexation shall be effective.

(12) The state boundary commission shall mail a copy of any final order issued under this section to each property owner the commission is required to provide notice to under subsection (2).

This act is ordered to take immediate effect.

Approved June 10, 2004.

Filed with Secretary of State June 10, 2004.

[No. 138]

(SB 1074)

AN ACT to amend 2001 PA 142, entitled "An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions," by amending section 17 (MCL 250.1017).

The People of the State of Michigan enact:

250.1017 “Green Arrow Route”; “Green Arrow Route-Mackinac Trail.”

Sec. 17. (1) The portion of highway M-66 beginning at the intersection with highway M-78 in Calhoun county and extending north to the intersection with highway US-131 in Kalkaska county shall be known as the “Green Arrow Route”.

(2) The portion of highway US-131 beginning at the intersection with highway M-66 and extending north to the intersection with highway US-31 and the portion of highway US-31 beginning at the intersection with highway US-131 and extending north to the straits of Mackinac shall be known as the “Green Arrow Route-Mackinac Trail”.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 139]

(SB 241)

AN ACT to amend 2001 PA 142, entitled “An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions,” (MCL 250.1001 to 250.1100) by adding section 1073.

The People of the State of Michigan enact:

250.2073 “Underground Railroad Memorial Highway.”

Sec. 1073. The portion of highway US-131 in the township of Schoolcraft beginning at the intersection of US-131 and West U avenue in Kalamazoo county and continuing south to the intersection of West XY avenue and US-131 shall be known as the “Underground Railroad Memorial Highway”.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

(a) Senate Bill No. 1074.

(b) House Bill No. 5491.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

Compiler's note: Senate Bill No. 1074, referred to in enacting section 1, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 138, Imd. Eff. June 15, 2004.

House Bill No. 5491, also referred to in enacting section 1, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 140, Imd. Eff. June 15, 2004.

[No. 140]**(HB 5491)**

AN ACT to amend 2001 PA 142, entitled “An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions,” (MCL 250.1001 to 250.1100) by adding section 1080.

The People of the State of Michigan enact:

250.2080 “Underground Railroad Memorial Highway.”

Sec. 1080. The portion of highway I-94 beginning at exit 98 in Calhoun county and continuing east to exit 110 in Calhoun county shall be known as the “Underground Railroad Memorial Highway”.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 241 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

Compiler's note: Senate Bill No. 241, referred to in enacting section 1, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 139, Imd. Eff. June 15, 2004.

[No. 141]**(SB 559)**

AN ACT to amend 1998 PA 58, entitled “An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts,” by amending section 513 (MCL 436.1513), as amended by 2002 PA 725.

The People of the State of Michigan enact:

436.1513 Licenses; issuance to governing board of college or university; restrictions and prohibition; sale of alcoholic liquor on hotel premises located on land owned by central Michigan university; license to private entity; conditions; nontransferability; fee; “college”, “university”, and “conference center” defined.

Sec. 513. (1) The commission may issue to the governing board of a college or university, without regard to the quota provisions of section 531, a license to sell alcoholic liquor for consumption on the premises of a conference center operated by the governing board. Licenses granted under this subsection may be used only for the sale of alcoholic liquor at regularly scheduled conference center activities. The sale of alcoholic liquor to unscheduled patrons or at unscheduled events is prohibited under this subsection.

(2) Subject to the provisions of section 531, the commission may issue a license to a private entity for the sale of alcoholic liquor for consumption on the premises of a hotel located on land owned by central Michigan university if both of the following circumstances exist:

(a) The land is leased or subleased at fair market value to a private entity that owns, leases, or subleases the hotel building and its fixtures.

(b) The hotel and land are located within an industrial, research, or commercial development park established by the governing board of central Michigan university.

(3) Licenses issued pursuant to this section are nontransferable, and the licensee shall pay the fee required under section 525.

(4) As used in this section:

(a) “College” or “university” means a 2-year or 4-year state supported institution of higher education.

(b) “Conference center” means a building or portion of a building, other than a student residence hall or student center, which has meeting rooms, banquet areas, social halls, overnight accommodations, and related facilities for special activities scheduled by the college or university, which in the judgment of the commission, has been regularly used for conferences and lodging of guests. The convocation center and the corporate education center at eastern Michigan university, the Kirkhof and Eberhard centers at Grand Valley state university, the Bernhard center at western Michigan university, the Wadsworth center at Michigan technological university, the West complex at Saginaw Valley state university, the conference center at Big Rapids, the applied technology center at Grand Rapids and the FSU-GR conference center of Ferris state university, Grand Rapids junior college, the Waterman campus center at Schoolcraft college, the Mendel center at Lake Michigan community college, the McGregor memorial conference center at Wayne state university, the Michigan state university management educational center, the Superior dome at northern Michigan university, Walker Cislser center at Lake Superior state university, the Marie Prahl college center at Mott community college, the John T. Parsons and Frank L. Stulen Michigan technical education center, the Gerald and Frances Oleson center, the Dennos museum center, and the Great Lakes campus at northwestern Michigan college, and the farmhouse at Delta college are considered conference centers for the purposes of this act.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 142]**(HB 5586)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending sections 3101 and 51107 (MCL 324.3101 and 324.51107), section 3101 as amended by 2004 PA 90 and section 51107 as added by 1995 PA 57, and by adding section 3111b.

The People of the State of Michigan enact:

324.3101 Definitions.

Sec. 3101. As used in this part:

(a) “Aquatic nuisance species” means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

(b) “Ballast water” means water and associated solids taken on board a vessel to control or maintain trim, draft, stability, or stresses on the vessel, without regard to the manner in which it is carried.

(c) “Ballast water treatment method” means a method of treating ballast water and sediments to remove or destroy living biological organisms through 1 or more of the following:

(i) Filtration.

(ii) The application of biocides or ultraviolet light.

(iii) Thermal methods.

(iv) Other treatment techniques approved by the department.

(d) “Department” means the department of environmental quality.

(e) “Detroit consumer price index” means the most comprehensive index of consumer prices available for the Detroit area from the United States department of labor, bureau of labor statistics.

(f) “Emergency management coordinator” means that term as defined in section 2 of the emergency management act, 1976 PA 390, MCL 30.402.

(g) “Great Lakes” means the Great Lakes and their connecting waters, including Lake St. Clair.

(h) “Group 1 facility” means a facility whose discharge is described by R 323.2218 of the Michigan administrative code.

(i) “Group 2 facility” means a facility whose discharge is described by R 323.2210(y), R 323.2215, or R 323.2216 of the Michigan administrative code.

(j) “Group 3 facility” means a facility whose discharge is described by R 323.2211 or R 323.2213 of the Michigan administrative code.

(k) “Local health department” means that term as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(l) “Local unit” means a county, city, village, or township or an agency or instrumentality of any of these entities.

(m) “Municipality” means this state, a county, city, village, or township, or an agency or instrumentality of any of these entities.

(n) “National response center” means the national communications center established under the clean water act, 33 USC 1251 to 1387, located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate federal officials.

(o) “Nonocean-going vessel” means a vessel that is not an ocean-going vessel.

(p) “Ocean-going vessel” means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in waters outside of the Great Lakes or the St. Lawrence waterway.

(q) “Primary public safety answering point” means that term as defined in section 102 of the emergency telephone service enabling act, 1986 PA 32, MCL 484.1102.

(r) “Sediments” means any matter settled out of ballast water within a vessel.

(s) “Sewage sludge” means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(t) “Sewage sludge derivative” means a product for land application derived from sewage sludge that does not include solid waste or other waste regulated under this act.

(u) “Sewage sludge generator” means a person who generates sewage sludge that is applied to land.

(v) “Sewage sludge distributor” means a person who applies, markets, or distributes, except at retail, a sewage sludge derivative.

(w) “St. Lawrence waterway” means the St. Lawrence river, the St. Lawrence seaway, and the gulf of St. Lawrence.

(x) “Threshold reporting quantity” means that term as defined in R 324.2002 of the Michigan administrative code.

(y) “Waters of the state” means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.

324.3111b Release required to be reported under R 324.2001 to R 324.2009.

Sec. 3111b. (1) If a person is required to report a release to the department under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person, via a 9-1-1 call, shall at the same time report the release to the primary public safety answering point serving the jurisdiction where the release occurred.

(2) If a person described in subsection (1) is required to subsequently submit to the department a written report on the release under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person shall at the same time submit a copy of the report to the local health department serving the jurisdiction where the release occurred.

(3) If the department of state police or other state agency receives notification, pursuant to an agreement with or the laws of another state, Canada, or the province of Ontario, of the release in that other jurisdiction of a polluting material in excess of the

threshold reporting quantity and if the polluting material has entered or may enter surface waters or groundwaters of this state, the department of state police or other state agency shall contact the primary public safety answering point serving each county that may be affected by the release.

(4) The emergency management coordinator of each county shall develop and oversee the implementation of a plan to provide timely notification of a release required to be reported under subsection (1) or (3) to appropriate local, state, and federal agencies. In developing and overseeing the implementation of the plan, the emergency management coordinator shall consult with both of the following:

(a) The directors of the primary public safety answering points with jurisdiction within the county.

(b) Any emergency management coordinator appointed for a city, village, or township located in that county.

(5) If rules promulgated under this part require a person to maintain a pollution incident prevention plan, the person shall update the plan to include the requirements of subsections (1) and (2) when conducting any evaluation of the plan required by rule.

(6) If a person reports to the department a release pursuant to subsection (1), the department shall do both of the following:

(a) Notify the person of the requirements imposed under subsections (1) and (2).

(b) Request that the person, even if not responsible for the release, report the release, via a 9-1-1 call, to the primary public safety answering point serving 1 of the following, as applicable:

(i) The jurisdiction where the release occurred, if known.

(ii) The jurisdiction where the release was discovered, if the jurisdiction where the release occurred is not known.

(7) The department shall notify the public and interested parties, by posting on its website within 30 days after the effective date of the amendatory act that added this section and by other appropriate means, of all of the following:

(a) The requirements of subsections (1) and (2).

(b) The relevant voice, and, if applicable, facsimile telephone numbers of the department and the national response center.

(c) The criminal and civil sanctions under section 3115 applicable to violations of subsections (1) and (2).

(8) Failure of the department to provide a person with the notification required under subsection (6) or (7) does not relieve the person of any obligation to report a release or other legal obligation.

(9) The department shall biennially do both of the following:

(a) Evaluate the state and local reporting system established under this section.

(b) Submit to the standing committees of the senate and house of representatives with primary responsibility for environmental protection issues a written report on any changes recommended to the reporting system.

324.51107 Annual specific tax and state payment; adjustment; computation of ratio.

Sec. 51107. The annual specific tax and state payment described in section 51106 shall be adjusted in 2006 and every tenth year after 2006 to the nearest cent by the use of a ratio computed by the revenue division of the department of treasury. The ratio shall be

computed by using the state equalized value per acre of the timber cutover lands within the state in 1990 as the denominator and using the state equalized value per acre for timber cutover lands in 2004 and every tenth year after 2004 as the numerator.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 977 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

Compiler's note: Senate Bill No. 977, referred to in enacting section 1, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 143, Imd. Eff. June 15, 2004.

[No. 143]

(SB 977)

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 3115 (MCL 324.3115), as amended by 2004 PA 91.

The People of the State of Michigan enact:

324.3115 Violations; civil or criminal liability; venue; jurisdiction; penalties; knowledge attributable to defendant; lien; setoff.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court, except as otherwise provided in this subsection, shall impose a civil fine of not less than \$2,500.00 and the court may award reasonable attorney fees and costs to the prevailing party. However, all of the following apply:

(a) The maximum fine imposed by the court shall be not more than \$25,000.00 per day of violation.

(b) For a failure to report a release to the department or to the primary public safety answering point under section 3111b(1), the court shall impose a civil fine of not more than \$2,500.00.

(c) For a failure to report a release to the local health department under section 3111b(2), the court shall impose a civil fine of not more than \$500.00.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit or order issued or rule promulgated under this part, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the sanctions set forth in subsection (1), a fine of not less than \$500,000.00 and not more than \$5,000,000.00.

(4) Upon a finding by the court that the actions of a criminal defendant pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a fine of not less than \$1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsection (3) or (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person should observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) A civil fine or other award ordered paid pursuant to this section shall do both of the following:

(a) Be payable to the state of Michigan and credited to the general fund.

(b) Constitute a lien on any property, of any nature or kind, owned by the defendant.

(8) A lien under subsection (7)(b) shall take effect and have priority over all other liens and encumbrances except those filed or recorded prior to the date of judgment only if notice of the lien is filed or recorded as required by state or federal law.

(9) A lien filed or recorded pursuant to subsection (8) shall be terminated according to the procedures required by state or federal law within 14 days after the fine or other award ordered to be paid is paid.

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5586 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

Compiler's note: House Bill No. 5586, referred to in enacting section 1, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 142, Imd. Eff. June 15, 2004.

[No. 144]

(HB 5134)

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding section 16276.

The People of the State of Michigan enact:

333.16276 Use of laser for dermatological purposes; supervision of licensed physician required; exceptions; rules; definitions.

Sec. 16276. (1) A licensee, registrant, or other individual shall not perform any procedure using a laser for dermatological purposes unless the procedure is performed under the supervision of a licensed physician.

(2) A licensee, registrant, or other individual shall not perform any procedure using a laser for dermatological purposes unless the patient has knowledge and consents to the procedure being performed by that licensee, registrant, or individual.

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

(a) A licensed physician.

(b) A licensed physician's assistant who performs such a procedure in a health care facility.

(c) A certified nurse practitioner who performs such a procedure in a health care facility.

(4) The department may promulgate rules to further prohibit or otherwise restrict the use of lasers for dermatological purposes.

(5) As used in this section:

(a) "Dermatological" means of or relating to the practice of dermatology.

(b) "Practice of dermatology" means the diagnosis and treatment of medically necessary and cosmetic conditions of the skin, hair, and nails by various surgical, reconstructive, cosmetic, and nonsurgical methods.

(c) "Supervision" means the overseeing of or participation in the work of another individual by a health professional licensed under this article in circumstances where at least all of the following conditions exist:

(i) The continuous availability of direct communication in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional.

(ii) The availability of a licensed health professional on a regularly scheduled basis to review the practice of the supervised individual, to provide consultation to the supervised individual, to review records, and to further educate the supervised individual in the performance of the individual's functions.

(iii) The provision by the licensed supervising health professional of predetermined procedures and drug protocol.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 145]

(SB 662)

AN ACT to amend 1974 PA 75, entitled "An act to provide for payment to approved independent nonprofit institutions of higher education, located within the state, for all

earned degrees conferred upon Michigan residents; and to provide for appropriations,” by amending section 3 (MCL 390.1023), as amended by 1984 PA 9.

The People of the State of Michigan enact:

390.1023 Certain degrees excluded from computation.

Sec. 3. (1) A degree earned in a program with respect to which state reimbursement other than that established by this act is granted to an independent nonprofit institution is excluded from computation under section 1.

(2) A degree conferred by an institution whose primary purpose is to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect is excluded from computation under section 1.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 146]

(SB 1179)

AN ACT to amend 2001 PA 142, entitled “An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions,” (MCL 250.1001 to 250.1100) by adding section 74.

The People of the State of Michigan enact:

250.1074 “Veterans Memorial Bridge.”

Sec. 74. The bridge on US-31 in Ottawa county located in the city of Grand Haven between Jackson street and the M-104 exit, locally known as the “South Channel Bridge”, shall be known as the “Veterans Memorial Bridge”.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 147]

(SB 1160)

AN ACT to amend 2001 PA 142, entitled “An act to consolidate prior acts naming certain Michigan highways; to provide for the naming of certain highways; to prescribe certain duties of the state transportation department; and to repeal acts and parts of acts and certain resolutions,” (MCL 250.1001 to 250.1100) by adding section 82.

The People of the State of Michigan enact:

250.1082 “Kevin Sherwood Memorial Highway.”

Sec. 82. The portion of highway US-127 in Clare county shall be known as the “Kevin Sherwood Memorial Highway”.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 148]

(SB 1073)

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, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; 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 1246 (MCL 380.1246), as amended by 1995 PA 289.

The People of the State of Michigan enact:

380.1246 Superintendent, principal, assistant principal, administrator of instructional programs, or chief business official; completion of continuing education requirements; rules.

Sec. 1246. (1) A school district, public school academy, or intermediate school district shall not continue to employ a person as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs or as a chief business official unless the person has completed the continuing education requirements prescribed by rule under subsection (2).

(2) The superintendent of public instruction shall promulgate rules establishing continuing education requirements as a condition for continued employment for persons employed in positions described in subsection (1). The rules shall prescribe a minimum amount of continuing education that shall be completed within 5 years after initial employment and shall be completed each subsequent 5-year period to meet the requirements of subsection (1) for continued employment.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 149]**(SB 913)**

AN ACT to amend 1972 PA 222, entitled “An act to provide for an official personal identification card; to provide for its form, issuance and use; to regulate the use and disclosure of information obtained from the card; to prescribe the powers and duties of the secretary of state; to prescribe fees; to prescribe certain penalties for violations; and to provide an appropriation for certain purposes,” by amending section 5 (MCL 28.295), as amended by 1984 PA 335.

The People of the State of Michigan enact:

28.295 Conduct constituting felony or misdemeanor; penalties; exceptions.

Sec. 5. (1) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates an official state personal identification card photograph, the negative of the photograph, an official state personal identification card image, an official state personal identification card, or the electronic data contained on an official state personal identification card or a part of an official state personal identification card or who uses an official state personal identification card, image, or photograph that has been reproduced, altered, counterfeited, forged, or duplicated is subject to 1 of the following:

(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a felony punishable by imprisonment for 10 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000.00, or both.

(b) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by imprisonment for 6 months or more, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not more than \$10,000.00, or both.

(c) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense that is a misdemeanor punishable by imprisonment for less than 6 months, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use 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.

(2) A person who sells or possesses with the intent to deliver to another a reproduced, altered, counterfeited, forged, or duplicated official state personal identification card photograph, negative of the photograph, official state personal identification card image, official state personal identification card, or electronic data contained on an official state personal identification card or part of an official state personal identification card, or who possesses 2 or more reproduced, altered, counterfeited, forged, or duplicated official state identification card photographs, negatives of the photograph or photographs, image or images, official state identification card or cards, or electronic data contained on official state identification card or cards, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(3) A person who is in possession of an altered, counterfeited, forged, or duplicated official state personal identification card photograph, negative of the photograph, official

state personal identification card image, official state personal identification card, or electronic data contained on an official state personal identification card or part of an official state personal identification card 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.

(4) A person shall not steal or, without the cardholder's permission, knowingly take or knowingly remove an official state personal identification card from the person or possession of another. A person shall not use an official state personal identification card that is stolen or knowingly taken or knowingly removed from the person or possession of another. Except as provided in subsection (5), a person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year.

(5) A person shall not use an official state personal identification card in the commission of a felony if the card is stolen or knowingly taken or knowingly removed from the person or possession of another. A person who violates this subsection is guilty of the penalties provided for the felony committed with the use of the card.

(6) Subsections (2) and (3) do not apply to a person who is in possession of 1 or more photocopies, reproductions, or duplications of an official state personal identification card or part of an official state personal identification card to document the person's identity for a legitimate business purpose.

(7) Subsections (1)(a) and (b) and (2) do not apply to a minor whose intent is to violate section 703 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703.

Effective date.

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

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 150]

(SB 912)

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 11b of chapter XVII (MCL 777.11b), as added by 2002 PA 31.

The People of the State of Michigan enact:

CHAPTER XVII

777.11b Chapter 28 of Michigan Compiled Laws; felonies to which chapter applicable.

Sec. 11b. This chapter applies to the following felonies enumerated in chapter 28 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
28.214	Pub trst	F	Unauthorized disclosure of information from LEIN — subsequent offense	4
28.293(1)	Pub ord	E	False information when applying for state ID	5
28.293(2)	Pub ord	D	False information when applying for state ID — second offense	7
28.293(3)	Pub ord	C	False information when applying for state ID — third or subsequent offense	15
28.295(1)(a)	Pub ord	D	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for 10 years or more	10
28.295(1)(b)	Pub ord	E	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by more than 6 months	5
28.295(2)	Pub ord	E	Selling counterfeited or forged state ID card or possessing counterfeited or forged state ID card with intent to deliver to another person or possessing 2 or more counterfeited or forged state ID cards	5
28.295(5)	Property	H	Using stolen state ID card to commit felony	Variable
28.295a(1)	Pub ord	H	False representation to obtain or misuse personal information	4

28.295a(2)	Pub ord	G	False representation to obtain or misuse personal information — second offense	7
28.295a(3)	Pub ord	C	False representation to obtain or misuse personal information — third or subsequent offense	15
28.422	Pub saf	F	Pistols — license application forgery	4
28.422a(4)	Pub saf	F	False statement on pistol sales record	4
28.425b(3)	Pub saf	F	False statement on concealed pistol permit application	4
28.425j(2)	Pub saf	F	Unlawful granting or presenting of pistol training certificate	4
28.425o(5)(c)	Pub saf	F	Carrying concealed pistol in prohibited place — third or subsequent offense	4
28.435(14)(c)	Pub saf	G	Firearm sale without trigger lock, gun case, or storage container — third or subsequent offense	2
28.729(1)(a)	Pub ord	F	Failure to register as a sex offender, first offense	4
28.729(1)(b)	Pub ord	D	Failure to register as a sex offender, second offense	7
28.729(1)(c)	Pub ord	D	Failure to register as a sex offender, third or subsequent offense	10

Effective date.

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

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 913 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

Compiler's note: Senate Bill No. 913, referred to in enacting section 2, was filed with the Secretary of State June 15, 2004, and became P.A. 2004, No. 149, Eff. Sept. 1, 2004.

[No. 151]

(SB 981)

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the

regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," by amending section 675 (MCL 257.675), as amended by 2002 PA 618.

The People of the State of Michigan enact:

257.675 Stopping, standing, or parking of vehicle; requirements; signs; traffic control orders; hearing; windshield placard; certificate of identification for disabled person; special registration plates; courtesy required; free parking sticker; display; confiscation; false statement, deception, or fraud as misdemeanor; penalty; violation as civil infraction; cancellation, revocation, or suspension; driver's, chauffeur's, or state personal identification card number; signature of out-of-state physician, physician assistant or certified nurse practitioner; third party reimbursement or worker's compensation.

Sec. 675. (1) Except as otherwise provided in this section and this chapter, a vehicle stopped or parked upon a highway or street shall be stopped or parked with the wheels of the vehicle parallel to the roadway and within 12 inches of any curb existing at the right of the vehicle.

(2) A local authority may by ordinance permit parking of a vehicle on a 1-way roadway with the vehicle's left wheels adjacent to and within 12 inches of any curb existing at the left of the vehicle.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on a state trunk line highway.

(4) The state transportation commission with respect to state trunk line highways and the board of county road commissioners with respect to county roads, acting jointly with the director of the department of state police, may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in the opinion of the officials as determined by an engineering survey, the stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on the highway or street. The signs shall be official signs and a person shall not stop, stand, or park a vehicle in violation of the restrictions stated on the signs. The signs shall be installed only after a proper traffic order is filed with the county clerk. Upon the application to the state transportation commission by a home rule city affected by an order, opportunity shall be given to the city for a hearing before the state transportation commission, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, except when an ordinance of the home rule city prohibits or restricts the parking of vehicles on a state trunk line highway; when the home rule city, by lawfully authorized official action, requests the state transportation department to prohibit or restrict parking on a state trunk line highway; or when the home rule city enters into a construction agreement with the state transportation department providing for the prohibition or restriction of parking on a state trunk line highway during or after the period of construction. Traffic control

orders, so long as they affect parking upon a state trunk line highway within the corporate limits of a home rule city, are considered “rules” within the meaning of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and upon application for a hearing by a home rule city, the proceedings before the state transportation commission shall be considered a “contested case” within the meaning of that act.

(5) A disabled person may apply, on a form prescribed by the secretary of state, for a serially numbered nontransferable temporary or permanent windshield placard for the personal use of the disabled person. An individual who has a religious objection to having a medical examination may personally apply at a branch office of the secretary of state for a serially numbered nontransferable temporary or permanent windshield placard for the personal use of the disabled individual. If it appears obvious that the individual has a qualifying disability, the individual shall not be required to present a medical statement attesting to the disability. The application for and the issuance of the serially numbered nontransferable temporary or permanent windshield placard is subject to all of the following:

(a) The secretary of state may issue to a disabled person with a temporary disability a temporary windshield placard that is valid for a period of not more than 6 months.

(b) The secretary of state may issue to a disabled person with a permanent disability an original or renewal permanent windshield placard that is valid for at least 4 years.

(c) An original certificate of identification or permanent windshield placard shall expire on the disabled person’s fifth birthday after the date of issuance.

(d) A renewal permanent windshield placard shall expire on the disabled person’s fourth birthday after the date of renewal.

(e) A person holding a certificate of identification or permanent windshield placard at any time within 45 days before the expiration of his or her certificate or placard may make application for a new or renewal placard as provided for in this section. However, if the person will be out of state during the 45 days immediately preceding expiration of the certificate or placard or for other good cause shown cannot apply for a placard within the 45-day period, application for a new or renewal placard may be made not more than 6 months before expiration of the certificate or placard. A placard issued or renewed under this subdivision shall expire as provided for in this subsection.

(f) Upon application in the manner prescribed by the secretary of state for replacement of a lost, stolen, or destroyed certificate or placard described in this section, a disabled person or organization that provides specialized services to disabled persons may be issued a placard that in substance duplicates the original certificate or placard for a fee of \$10.00.

(g) A certificate or placard described in this section may be used by a person other than the disabled person for the sole purpose of transporting the disabled person. An organization that provides specialized services to disabled persons may apply for and receive a permanent windshield placard to be used in any motor vehicle actually transporting a disabled person. If the organization ceases to transport disabled persons, the placard shall be returned to the secretary of state for cancellation and destruction.

(6) A disabled person with a certificate of identification, windshield placard, special registration plates issued under section 803d, a special registration plate issued under section 803f that has a tab for persons with disabilities attached, a certificate of identification or windshield placard from another state, or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle. The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in

violation of this act. A local authority may by ordinance prohibit parking on a street or highway to create a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extending to veterans and physically disabled persons under this subsection do not supersede that ordinance.

(7) Except as otherwise provided in subsection (24), an application for an initial free parking sticker shall contain a certification by a physician, physician assistant, or certified nurse practitioner licensed to practice in this state attesting to the nature and estimated duration of the applicant's disabling condition and verifying that the applicant qualifies for a free parking sticker. An individual who has a religious objection to having a medical examination may personally apply at a branch office of the secretary of state for an initial free parking sticker. If it appears obvious that the individual is unable to do 1 or more of the acts listed in subdivisions (a) to (d), the individual shall not be required to present a certification by a physician, a physician assistant, or a certified nurse practitioner attesting to the nature and estimated duration of the applicant's disabling condition or verifying that the applicant qualifies for a free parking sticker. The applicant qualifies for a free parking sticker if the applicant is a licensed driver and the physician, physician assistant, or certified nurse practitioner certifies or, if an individual is not required to have a certification by a physician, a physician assistant, or a certified nurse practitioner, it is obvious that the applicant is unable to do 1 or more of the following:

(a) Manage, manipulate, or insert coins, or obtain tickets or tokens in parking meters or ticket machines in parking lots or parking structures, due to the lack of fine motor control of both hands.

(b) Reach above his or her head to a height of 42 inches from the ground, due to a lack of finger, hand, or upper extremity strength or mobility.

(c) Approach a parking meter due to his or her use of a wheelchair or other device.

(d) Walk more than 20 feet due to an orthopedic, neurological, cardiovascular, or lung condition in which the degree of debilitation is so severe that it almost completely impedes the ability to walk.

(8) To be entitled to free parking in a metered space or in a publicly owned parking structure or area, a vehicle must properly display 1 of the following:

(a) A windshield placard bearing a free parking sticker issued pursuant to this act.

(b) A valid certificate of identification issued before October 1, 1994.

(c) A valid windshield placard issued by another state.

(d) A certificate of identification issued by another state.

(e) A license plate for persons with disabilities issued by another state.

(f) A special registration plate with a tab for persons with disabilities attached issued by another state.

(9) A vehicle that does not properly display 1 of the items listed in subsection (8) is not entitled to free parking in a metered parking space or in a publicly owned parking area or structure, and the disabled person or vehicle operator shall pay all parking fees and may be responsible for a civil infraction.

(10) Blindness that is not accompanied by an incapacity described in subsection (7) does not entitle a person to a free parking sticker.

(11) The secretary of state shall attach a free parking sticker, in contrasting colors, to the windshield placard of a person certified as having an incapacity described in subsection (7).

(12) A windshield placard issued under this section shall be displayed on the interior rearview mirror of the vehicle or, if there is no interior rearview mirror, on the lower left

corner of the dashboard while the vehicle is parked or being parked by or under the direction of a disabled person pursuant to this section.

(13) A certificate of identification issued before February 11, 1992 shall be displayed on the lower left corner of the dashboard of the parked vehicle.

(14) Upon conviction of an offense involving a violation of the special privileges conferred upon a holder of a certificate of identification, windshield placard, or free parking sticker, a magistrate or judge trying the case, as a part of any penalty imposed, may confiscate the serially numbered certificate of identification, windshield placard, or free parking sticker and return the confiscated item or items to the secretary of state together with a certified copy of the sentence imposed. Upon receipt of a certificate of identification, windshield placard, or free parking sticker from a judge or magistrate, the secretary of state shall cancel and destroy the certificate, placard, or sticker, and the disabled person to whom it was issued shall not receive another certificate, placard, or sticker until he or she submits a completed application and presents a current medical statement attesting to his or her condition. A law enforcement officer who observes a misuse of a certificate of identification, windshield placard, or free parking sticker may immediately confiscate the certificate, placard, or sticker and forward it with a copy of his or her report to the secretary of state.

(15) A person who intentionally makes a false statement of material fact or commits or attempts to commit a deception or fraud on a medical statement attesting to a disability, submitted in support of an application for a certificate of identification, windshield placard, free parking sticker, special registration plate, or tab for persons with disabilities under this section, section 803d, or section 803f, is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both.

(16) A person who commits or attempts to commit a deception or fraud by 1 or more of the following methods is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 30 days, or both:

(a) Using a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state to provide transportation to a disabled person, when the person is not providing transportation to a disabled person.

(b) Altering, modifying, or selling a certificate of identification, windshield placard, or free parking sticker issued under this section or by another state.

(c) Copying or forging a certificate of identification, windshield placard, or free parking sticker described in this section or selling a copied or forged certificate, placard, or sticker described in this section. In the case of a violation of this subdivision, the fine described in this subsection shall be not less than \$250.00.

(d) Using a copied or forged certificate of identification, windshield placard, or free parking sticker described in this section.

(e) Making a false statement of material fact to obtain or assist an individual in obtaining a certificate, placard, or sticker described in this section, a special registration plate under section 803d, or a tab for persons with disabilities under section 803f.

(f) Knowingly using or displaying a certificate, placard, or sticker described in this section that has been canceled by the secretary of state.

(17) Except as otherwise provided in this section, a person who violates this section is responsible for a civil infraction.

(18) A certificate of identification issued before October 1, 1994 and containing an expiration date is valid for free parking in a space controlled or regulated by a meter on a public highway or in a publicly owned parking area or structure when the time for

parking indicated on the meter has expired, or in a parking space clearly identified by an official sign as being reserved for use by disabled persons that is on public property or private property available for public use, until the expiration date printed on the certificate. The certificate expires and shall be canceled on its expiration date.

(19) A certificate of identification issued before October 1, 1994 that does not contain an expiration date expires and shall be canceled on October 1, 1994.

(20) A certificate of identification shall not be issued or renewed by the secretary of state after October 1, 1994.

(21) The secretary of state may cancel, revoke, or suspend a windshield placard, free parking sticker, or certificate of identification under any of the following circumstances:

(a) The secretary of state determines that a windshield placard, free parking sticker, or certificate of identification was fraudulently or erroneously issued.

(b) The secretary of state determines that a person has made or is making an unlawful use of his or her windshield placard, free parking sticker, or certificate of identification.

(c) The secretary of state determines that a check or draft used to pay the required fee is not paid on its first presentation and is not paid upon reasonable notice or demand or that the required fee is paid by an invalid credit card.

(d) The secretary of state determines that the person is no longer eligible to receive or use a windshield placard, free parking sticker, or certificate of identification.

(e) The secretary of state determines that the owner has committed an offense under this act involving a windshield placard, free parking sticker, or certificate of identification.

(f) A person has violated this act and the secretary of state is authorized under this act to cancel, revoke, or suspend a windshield placard, free parking sticker, or certificate of identification for that violation.

(g) The secretary of state receives notice from another state or foreign country that a windshield placard, free parking sticker, or certificate of identification issued by the secretary of state has been surrendered by the owner or seized in conformity with the laws of that other state or foreign country, or has been improperly used or displayed in violation of the laws of that other state or foreign country.

(22) Before a cancellation, revocation, or suspension under subsection (21), the person affected thereby shall be given notice and an opportunity to be heard.

(23) A windshield placard issued to a disabled person shall bear the first letter and the last 3 digits of the disabled person's driver's or chauffeur's license number or the first letter and the last 4 digits of the number on his or her official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(24) For purposes of this section only, the secretary of state may accept an application for a windshield placard, special registration plate, or free parking sticker from a disabled person that is signed by a physician, physician assistant, or certified nurse practitioner licensed or certified to practice in another state if the application is accompanied by a copy of that physician's, physician assistant's, or certified nurse practitioner's current medical license or certification issued by that state.

(25) This section does not require new or additional third party reimbursement or worker's compensation benefits for services rendered.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 152]**(SB 987)**

AN ACT to amend 1974 PA 369, entitled “An act to regulate the business of conducting a driver training school; to require certain licenses in relation thereto; to provide for performance objectives for certain driver education courses; to prescribe certain fees; to prescribe the powers and duties of certain persons and state departments; to prescribe remedies and penalties; and to repeal acts and parts of acts,” by amending section 5 (MCL 256.605), as amended by 2004 PA 70.

The People of the State of Michigan enact:

256.605 Instructor to be licensed; application for licensing of employees as instructors; fee; issuance and expiration of license certificate; condition for cancellation or revocation of license; notification; qualifications of instructor; certification under revised school code.

Sec. 5. (1) A driver training school licensee shall not employ a person as an instructor unless the person is licensed as an instructor.

(2) A driver training school licensee shall annually file an application with the department for licensing of its employees as instructors. For each employee for which licensure as an instructor is sought, the application shall include all of the following:

(a) The name and address of the employee.

(b) The driver’s license number of the employee. An application for a nonresident employee shall also include a certified copy of his or her driving record from his or her state of residence.

(c) A dated medical examination report that is not more than 2 years old and is completed by a physician, a physician’s assistant, or a certified nurse practitioner licensed to practice in this state. An application for a nonresident employee fulfills the requirement of this subdivision if the application includes a report completed by a licensed physician, a licensed physician’s assistant, or a certified nurse practitioner licensed to practice in the employee’s state of residence. This subdivision does not require new or additional third party reimbursement or worker’s compensation benefits for services rendered.

(d) A fee of \$25.00 for each employee seeking licensure as an instructor.

(e) Except as otherwise provided in section 5b, an authorization to be signed by a prospective employee to be hired as a driving instructor permitting the licensee to request a criminal history check from the department of state police and the federal bureau of investigation.

(3) The department shall issue a license certificate to the driver training school licensee for each of its employees who meet the requirements of this act for licensure as an instructor. A license certificate expires on December 31 of the year for which it is issued.

(4) The department may issue a license certificate to an applicant for a driving instructor’s license after the favorable criminal history check from the department of state police, but on the condition that the license shall be canceled or revoked if the criminal history check from the federal bureau of investigation reveals that the applicant does not satisfy the qualifications for a license certificate. The department shall immediately notify the driver training school licensee, which shall require the applicant to surrender the license certificate.

(5) In order to qualify as an instructor, a person shall meet all of the following requirements:

(a) Be physically able to operate a motor vehicle and to train others in the operation of motor vehicles.

(b) Have a driving record that indicates competence to operate a motor vehicle consistent with standards set forth in rules promulgated by the secretary of state.

(c) Be 21 years of age or older on the date the person's license application is submitted to the secretary of state.

(d) Have a driving record, within the 5 years immediately preceding submission of an instructor license application to the secretary of state, that does not contain a conviction for any violation for which 4 or 6 points are assessed, other than points assessed for a violation of a speeding law or ordinance, pursuant to section 320a of the Michigan vehicle code, 1949 PA 300, MCL 257.320a. This subdivision only applies to an applicant who was not licensed as a driver training school instructor on October 1, 1992.

(e) Not have a prior felony or misdemeanor conviction for criminal sexual conduct pursuant to sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, or a felony conviction for a crime in which an element of the crime is the use or threat of use of physical force.

(6) The department shall not require that a driver training school instructor be certified under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 153]

(SB 724)

AN ACT to amend 1953 PA 181, entitled "An act relative to investigations in certain instances of the causes of death within this state due to violence, negligence or other act or omission of a criminal nature or to protect public health; to provide for the taking of statements from injured persons under certain circumstances; to abolish the office of coroner and to create the office of county medical examiner in certain counties; to prescribe the powers and duties of county medical examiners; to prescribe penalties for violations of the provisions of this act; and to prescribe a referendum thereon," by amending section 2 (MCL 52.202), as amended by 2001 PA 26.

The People of the State of Michigan enact:

52.202 Investigation by county medical examiner as to cause and manner of death; prisoners; medical records, papers, or documents; exemption from disclosure; definitions.

Sec. 2. (1) A county medical examiner or deputy county medical examiner shall investigate the cause and manner of death of an individual under each of the following circumstances:

(a) The individual dies by violence.

(b) The individual's death is unexpected.

(c) The individual dies without medical attendance by a physician, or the individual dies while under home hospice care without medical attendance by a physician or a registered nurse, during the 48 hours immediately preceding the time of death, unless the attending physician, if any, is able to determine accurately the cause of death.

(d) The individual dies as the result of an abortion, whether self-induced or otherwise.

(2) If a prisoner in a county or city jail dies while imprisoned, the county medical examiner or deputy county medical examiner, upon being notified of the death of the prisoner, shall examine the body of the deceased prisoner.

(3) In conducting an investigation under subsection (1) or (2), a county medical examiner or deputy county medical examiner may request the circuit court to issue a subpoena to produce medical records, books, papers, documents, or other items related to the death being investigated. The circuit court may punish failure to obey a subpoena issued under this section as contempt of court.

(4) Medical records, books, papers, documents, or other items that a county medical examiner or deputy county medical examiner obtains in conducting an investigation under this act, whether in response to a subpoena or otherwise, are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) As used in this section:

(a) "Home hospice care" means a program of planned and continuous hospice care provided by a hospice or a hospice residence that consists of a coordinated set of services rendered to an individual at his or her home on a continuous basis for a disease or condition with a terminal prognosis.

(b) "Physician" means a person licensed as a physician under part 170 or part 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556.

(c) "Registered nurse" means a person licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242.

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 154]

(SB 1009)

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 218 (MCL 750.218), as amended by 1998 PA 312.

The People of the State of Michigan enact:

750.218 False pretenses with intent to defraud; violation; penalty; enhanced sentence based on prior convictions; "false pretense" defined.

Sec. 218. (1) A person who, with the intent to defraud or cheat makes or uses a false pretense to do 1 or more of the following is guilty of a crime punishable as provided in this section:

(a) Cause a person to grant, convey, assign, demise, lease, or mortgage land or an interest in land.

(b) Obtain a person's signature on a forged written instrument.

(c) Obtain from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.

(d) By means of a false weight or measure obtain a larger amount or quantity of property than was bargained for.

(e) By means of a false weight or measure sell or dispose of a smaller amount or quantity of property than was bargained for.

(2) If the land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value, whichever is greater, or both imprisonment and a fine.

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

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$200.00 or more but less than \$1,000.00.

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

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

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$1,000.00 or more but less than \$20,000.00.

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

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

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$20,000.00 or more.

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

(6) The values of land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the violation of this section.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

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

(9) As used in this section, "false pretense" includes, but is not limited to, a false or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows is false or fraudulent. The false pretense may be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed.

Effective date.

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

This act is ordered to take immediate effect.

Approved June 15, 2004.

Filed with Secretary of State June 15, 2004.

[No. 155]

(SB 918)

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,” (MCL 750.1 to 750.568) by adding section 539j.

The People of the State of Michigan enact:

750.539j Surveillance of or distribution, dissemination, or transmission of recording, photograph, or visual image of individual having reasonable expectation of privacy; prohibited conduct; violation as felony; penalty; exceptions; “surveil” defined.

Sec. 539j. (1) A person shall not do any of the following:

(a) Surveil another individual who is clad only in his or her undergarments, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(b) Photograph, or otherwise capture or record, the visual image of the undergarments worn by another individual, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(c) Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

(2) A person who violates or attempts to violate this section is guilty of a crime as follows:

(a) For a violation or attempted violation of subsection (1)(a):

(i) Except as provided in subparagraph (ii), the person 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.

(ii) If the person was previously convicted of violating or attempting to violate subsection (1)(a), the person 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.

(b) For a violation or attempted violation of subsection (1)(b) or (c), the person 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.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate subsection (1)(a) to (c).

(4) This section does not prohibit security monitoring in a residence if conducted by or at the direction of the owner or principal occupant of that residence unless conducted for a lewd or lascivious purpose.

(5) This section does not apply to a peace officer of this state or of the federal government, or the officer’s agent, while in the performance of the officer’s duties.

(6) As used in this section, “surveil” means to subject an individual to surveillance as that term is defined in section 539a.

Effective date.

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