

**No. 73**  
**STATE OF MICHIGAN**  
**Journal of the Senate**  
**91st Legislature**  
**REGULAR SESSION OF 2002**

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Senate Chamber, Lansing, Wednesday, December 11, 2002.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor Dick Posthumus.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Bennett—present  
Bullard—present  
Byrum—present  
Cherry—present  
DeBeaussaert—present  
DeGrow—present  
Dingell—present  
Dunaskiss—present  
Emerson—present  
Emmons—present  
Garcia—present  
Gast—present  
Goschka—present

Gougeon—present  
Hammerstrom—present  
Hart—present  
Hoffman—present  
Johnson—present  
Koivisto—present  
Leland—present  
McCotter—present  
McManus—present  
Miller—present  
Murphy—excused  
North—present  
Peters—present

Sanborn—present  
Schuette—present  
Schwarz—present  
Scott—present  
Shugars—present  
Sikkema—present  
Smith—present  
Steil—excused  
Stille—present  
Van Regenmorter—present  
Vaughn—excused  
Young—present

Senator Leon Stille of the 32nd District offered the following invocation:

Our good and gracious God, we come to You again in these closing days of 2002 asking for Your guidance and Your direction—as we make year-ending, session-ending, and for some, career-ending decisions. Grant us the wisdom, sensitivity, and courage to make those decisions in the best interest of all and not just in the interest of ourselves or a select few.

We pray for the new governor, new leaders, and officeholders soon to take their place in these chambers—that they continue the tradition of thoughtful deliberation and compromise; that the will of the state and its people be first, not just those in office.

In this time of transition, we also pray for the many people who have served us so well as our office staff, our information resources, our support structure, and our process helpers. We pray that they too find new opportunities and responsibilities consistent with their talents and family needs. May those in authority demonstrate compassion and sensitivity to all those who have supported us so well, so they too can continue their lives and provide for their families as we do ours.

Now as we go about the work of this day, share Your calming Spirit, Your quiet guidance, and Your splendid bounty. May we be thankful for it and act accordingly.

In God's name we pray. So be it.

The President, Lieutenant Governor Posthumus, led the members of the Senate in recital of the *Pledge of Allegiance*.

### **Motions and Communications**

Senators Young and Byrum entered the Senate Chamber.

Senator Emmons moved that Senators Bennett, DeGrow, Schuette, Schwarz and Van Regenmorter be temporarily excused from today's session.

The motion prevailed.

Senator Emmons moved that Senator Steil be excused from today's and tomorrow's sessions.

The motion prevailed.

Senator Emerson moved that Senators Peters and Smith be temporarily excused from today's session.

The motion prevailed.

Senator Emerson moved that Senator Murphy be excused from today's session.

The motion prevailed.

Senator Emmons moved that rule 3.902 be suspended to allow the guests of Senator Sikkema admittance to the Senate floor, including the center aisle.

The motion prevailed, a majority of the members serving voting therefor.

Senator Emmons moved that rule 3.901 be suspended to allow photographs to be taken from the Senate floor, including the center aisle and Gallery.

The motion prevailed, a majority of the members serving voting therefor.

### **Recess**

Senator Emmons moved that the Senate recess subject to the call of the Chair.

The motion prevailed, the time being 10:04 a.m.

10:16 a.m.

The Senate was called to order by the Assistant President pro tempore, Senator Hoffman.

During the recess, Lieutenant Governor Posthumus introduced to the Senate Coach Noel Dean and the Lowell High School Football Team, Division II State Champions, and presented them with a special tribute acknowledging their outstanding accomplishments.

Coach Dean and team member Brian Posthumus responded briefly.

During the recess, Senators Schwarz, Bennett, Peters, Schuette, Smith, DeGrow and Van Regenmorter entered the Senate Chamber.

Senators Emmons and Hoffman asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Emmons' statement is as follows:

I rise this morning for a special tribute to Richard Barclay. He has worked for the Senate from November 1985 to December 2002. I would like to read it because there are things in here you probably don't know about Richard. He probably doesn't want to know either, but anyway.

"Let it be known, It's a pleasure to honor Richard Barclay for 17 years of excellent service to the Senate Republicans. In 1979, Richard moved to Michigan from his native Massachusetts to pursue graduate studies in agricultural economics at Michigan State University. His dissertation describes the theoretical relationship between technical efficiency and economic efficiency. He received his Ph.D. in 1985.

During Richard's tenure with the Senate Majority Policy Office, he has coordinated oversight of the budget process and served as policy advisor to the Senate Higher Education and Technology Committee, the Senate Education Committee, and the Senate Mental Health, Senior Citizens and Retirement Committee." That's where I met Richard.

"Policy areas for which he has been responsible include capital outlay, higher education, mental health, retirement, and technology. When asked to join Senator Joanne Emmons as policy advisor to the Senate Finance Committee, in 1994, Richard replied he really didn't have the background in taxes. Eight years later, as policy advisor to the Senate Finance Committee, he has successfully proposed, amended, evaluated, rejected, and approved hundreds of tax bills, including Proposal A and the recodification of the Municipal Finance Act.

Also during this time he took courses to become a level 2 Michigan certified assessor. His keen intellect and scrutiny of details assured that proposed bills were clear and fulfilled the purpose of the sponsor.

In special tribute, Therefore, This document is signed and dedicated to honor Richard Barclay in appreciation of his long and dedicated service to members of the Michigan Senate. May he know our best wishes for his new venture in the House of Representatives." Signed by Joanne Emmons.

Senator Hoffman's statement is as follows:

Richard, on behalf of the entire Senate, I want you to know that we're going to miss your service here, and you're a good man, Richard.

Senator Emmons moved that rule 3.902 be suspended to allow the guests of Senator DeGrow admittance to the Senate floor.

The motion prevailed, a majority of the members serving voting therefor.

Senators DeGrow, Hoffman and McManus asked and were granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator DeGrow's statement is as follows:

I'm sure most of the members know that this Friday will be the last day Judy Allen will be an employee of the Michigan Senate. The Governor has appointed her as the chair of the Liquor Control Commission.

I just wanted to take a moment to say goodbye. We have some food outside also, Phil. Obviously, I have known her a long time. I've known her so long that when I first met her, she called me "Sir" and "Mr. DeGrow." Those are referred to now as the good ol' days.

Actually, I first met her when I had just passed the bar exam, and the senior partner in my law firm came in and said that he was assigning me a college student to be my secretary half-time because that's all the help I needed was half-time—he figured.

Of course, I went on and got elected to the Legislature, and she came down here and has worked for me since. I would argue she has turned into as good a staffer as we've had. Nobody works harder, nobody works better, and nobody's more loyal.

Her family is here today. Wow, I don't even know them. I don't know all the names. She's got like nine brothers and sisters. I do know her husband Dave is here, her sons Steven and Christen are here, and her father and mother Jim and Marie are here. The rest, well, they can raise their hands.

I just want to thank her for all the years she has given to the state of Michigan, to the Senate, and to my office. We couldn't have done it without her. She will be missed as a Senate employee, but all of us are going different directions now, so this is the case.

Anyway, I wanted to say thank you, and again, there's food out there. We have a tribute, but I'm not going to bother to read it because, hopefully, things I've said are a lot more accurate than the tribute even is.

Senator Hoffman's statement is as follows:

Judy, Judy, Judy. On behalf of the entire Senate, you don't know how much we're going to miss you. We just hope that you don't leave before Dan does. Congratulations!

Senator McManus' statement is as follows:

In the west balcony on the south end is the power behind the throne at the Hendersons. Gary Henderson is my chief. His wife Bev and three youngsters Ashley, Trace, and Marian are here, and I would like to have you welcome them to the Senate this morning.

The following communications were received:

Department of State

Administrative Rules  
Notices of Filing

November 14, 2002

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 11:45 a.m. this date, administrative rule (02-11-03) for the Department of Environmental Quality, Surface Water Quality Division, entitled "*Water Quality Trading*," effective 7 days hereafter.

November 25, 2002

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 1:10 p.m. this date, administrative rule (02-11-04) for the Department of Consumer and Industry Services, Director's Office, entitled "*Part 11. Recording and Reporting of Occupational Injuries*," effective 7 days hereafter.

November 26, 2002

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 9:45 a.m. this date, administrative rule (02-11-05) for the Department of Environmental Quality, Air Quality Division, entitled "*Part 8. Emission of Oxides of Nitrogen From Stationary Sources*," effective 7 days hereafter.

December 3, 2002

In accordance with the provisions of Section 46(1) of Act 306, Public Acts of 1969, as amended, and Executive Order 1995-6, this is to advise you that the Office of Regulatory Reform, Legal Division filed at 1:20 p.m. this date, administrative rule (02-12-01) for the Department of Consumer and Industry Services, Director's Office, entitled "*Agricultural Operations*," effective 7 days hereafter.

Sincerely,  
Candice S. Miller  
Secretary of State  
Elena L. Beasley, Manager  
Office of the Great Seal

The communications were referred to the Secretary for record.

The Secretary announced the enrollment printing and presentation to the Governor on Tuesday, December 10, for his approval the following bill:

**Enrolled Senate Bill No. 686 at 4:25 p.m.**

By unanimous consent the Senate proceeded to the order of  
**General Orders**

Senator Emmons moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the Assistant President pro tempore, Senator Hoffman, designated Senator Goschka as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having assumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bills:

**House Bill No. 6219, entitled**

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 80166 (MCL 324.80166), as added by 1995 PA 58, and by adding section 80166a.

**House Bill No. 6496, entitled**

A bill to authorize and regulate electronic transactions of public funds involving local units of government; and to provide for powers and duties of certain governmental agencies and officials.

**House Bill No. 6234, entitled**

A bill to authorize the department of natural resources to convey certain state owned property in Huron county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance.

**House Bill No. 6444, entitled**

A bill to prescribe the Amber alert of Michigan as the official response to reports of child abductions.

**House Bill No. 6445, entitled**

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

**House Bill No. 4818, entitled**

A bill to amend 1988 PA 234, entitled "Michigan Vietnam veterans memorial act," by amending the title and sections 3 and 7 (MCL 35.1053 and 35.1057), the title as amended by 2000 PA 470 and sections 3 and 7 as amended by 1992 PA 121.

**House Bill No. 5122, entitled**

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," (MCL 257.1 to 257.923) by adding sections 217p and 217q.

**House Bill No. 6523, entitled**

A bill to amend 1951 PA 51, entitled "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to establish certain standards for road contracts for certain businesses; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain

other funds; to provide for the deposits in the state trunk line fund, critical bridge fund, comprehensive transportation fund, and certain other funds of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal acts and parts of acts," by amending section 11 (MCL 247.661), as amended by 2002 PA 498.

**House Bill No. 5952, entitled**

A bill to amend 1984 PA 431, entitled "The management and budget act," (MCL 18.1101 to 18.1594) by adding section 261c.

**House Bill No. 5971, entitled**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16299, 17014, and 17015 (MCL 333.16299, 333.17014, and 333.17015), section 17014 as added by 1993 PA 133 and section 17015 as amended by 2000 PA 345.

**House Bill No. 5996, entitled**

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 135 (MCL 750.135), as amended by 2000 PA 233.

**House Bill No. 5997, entitled**

A bill to amend 1975 PA 238, entitled "Child protection law," by amending section 8 (MCL 722.628), as amended by 2000 PA 234.

**House Bill No. 5047, entitled**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding section 12a to chapter V.

The bills were placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 6202, entitled**

A bill to amend 1973 PA 116, entitled "An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts," (MCL 722.111 to 722.128) by adding section 9.

Substitute (S-1).

The following are the amendments to the substitute recommended by the Committee of the Whole:

1. Amend page 2, line 1, after "HAVE" by inserting "UNSUPERVISED".
2. Amend page 2, line 10, after "OR" by inserting "UNSUPERVISED".

The Senate agreed to the substitute, as amended, recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 6204, entitled**

A bill to amend 1975 PA 238, entitled "Child protection law," (MCL 722.621 to 722.638) by adding section 7j.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendments, the following bill:

**House Bill No. 6205, entitled**

A bill to amend 1973 PA 116, entitled "An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts," (MCL 722.111 to 722.128) by adding section 3e.

The following are the amendments recommended by the Committee of the Whole:

1. Amend page 1, line 1, after "CENTER" by inserting "OR CHILD CARING INSTITUTION".
2. Amend page 1, line 3, after "CENTER" by inserting "OR CHILD CARING INSTITUTION".

The Senate agreed to the amendments recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

**House Bill No. 4330, entitled**

A bill to amend 1999 PA 94, entitled "Michigan merit award scholarship act," by amending sections 2, 7, and 8 (MCL 390.1452, 390.1457, and 390.1458), sections 7 and 8 as amended by 2002 PA 537.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 10, line 18, after "before" by striking out "September 30" and inserting "JANUARY 15 IN THE 2002-2003 ACADEMIC YEAR, AND SEPTEMBER 15 IN ANY OTHER ACADEMIC YEAR, FOR DISBURSEMENT".

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 5277, entitled**

A bill to amend 1925 PA 289, entitled "An act to create a bureau of criminal identification and records within the department of state police; to require peace officers, persons in charge of certain institutions, and others to make reports respecting juvenile offenses, crimes, and criminals to the state police; to require the fingerprinting of an accused by certain persons; and to provide penalties for violation of this act," by amending sections 2 and 3 (MCL 28.242 and 28.243), section 2 as amended by 1988 PA 40 and section 3 as amended by 1999 PA 266.

Substitute (S-2).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 5953, entitled**

A bill to provide for circumstances under which certain forestry operations shall not be found to be a public or private nuisance; to provide for certain forestry management practices; to provide for certain powers and duties for certain state agencies and departments; and to provide remedies.

Substitute (S-1).

The following is the amendment to the substitute recommended by the Committee of the Whole:

1. Amend page 4, line 7, after "operations" by inserting "voluntarily".

The Senate agreed to the substitute, as amended, recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 5242, entitled**

A bill to amend 1994 PA 203, entitled "Foster care and adoption services act," by amending section 8 (MCL 722.958).

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

**House Bill No. 5994, entitled**

A bill to assert the state's interest in protecting all individuals; and to prescribe responsibilities and procedures in regard to a newborn whose live birth results from an abortion.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 2, line 1, after "extraction" by striking out the balance of the subdivision and inserting "of a product of conception from its mother, regardless of the duration of the pregnancy, that after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is attached, shows any evidence of life, including, but not limited to, 1 or more of the following:

- (i) Breathing.
- (ii) A heartbeat.
- (iii) Umbilical cord pulsation.
- (iv) Definite movement of voluntary muscles."

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

**House Bill No. 5995, entitled**

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 3 of chapter XII (MCL 712.3), as added by 2000 PA 232.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 3, line 21, after "UNDER" by striking out "SECTION 3" and inserting "SECTION 3(1)".

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 5998, entitled**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 2822 and 2843 (MCL 333.2822 and 333.2843).

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendments, the following bill:

**House Bill No. 5484, entitled**

A bill to amend 1939 PA 280, entitled "The social welfare act," (MCL 400.1 to 400.119b) by adding section 18e.

The following are the amendments recommended by the Committee of the Whole:

1. Amend page 1, line 1, after "18E." by inserting "(1)".
2. Amend page 1, following line 10, by inserting

"(2) THE DEPARTMENT OF COMMUNITY HEALTH SHALL PROMULGATE RULES PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, TO IMPLEMENT THE ESTATE RECOVERY PROGRAM REQUIRED BY SECTION 1917 OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1396p. THE RULES SHALL INCLUDE, AT A MINIMUM, ALL OF THE FOLLOWING:

(A) PROCEDURES AND STANDARDS FOR WAIVING RECOVERY BASED ON UNDUE HARDSHIP.

(B) PROCEDURES FOR THE ATTACHMENT AND ENFORCEMENT OF LIENS.

(C) STANDARDS FOR WAIVING RECOVERY BASED ON COST-EFFECTIVENESS. THESE STANDARDS SHALL INCLUDE THE DOLLAR VALUE OF ESTATES AND OF MEDICAL BENEFITS RECEIVED BELOW WHICH RECOVERY SHALL NOT BE PURSUED.

(3) FUNDS RECEIVED UNDER THE ESTATE RECOVERY PROGRAM DESCRIBED IN (2) SHALL BE FIRST USED TO OFFSET THE COSTS OF OPERATING THE ESTATE RECOVERY PROGRAM, WITH THE REMAINING FUNDS DEPOSITED IN THE MEDICAID BENEFITS TRUST FUND THAT WAS CREATED PURSUANT TO ACT NO. 489 OF THE PUBLIC ACTS OF 2000, BEING SECTIONS 12.252 TO 12.256 OF THE MICHIGAN COMPILED LAWS."

The Senate agreed to the amendments recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.



By unanimous consent the Senate returned to the order of  
**Motions and Communications**

Senator Emerson moved that Senator Scott be temporarily excused from the balance of today’s session.  
The motion prevailed.

By unanimous consent the Senate returned to the order of  
**Messages from the Governor**

The following message from the Governor was received and read:

December 10, 2002

There is herewith presented for consideration and confirmation by the Senate, the following appointment to office:

**Liquor Control Commission**

Ms. Judy Allen, 12057 Madonna Drive, Lansing, Michigan 48917, county of Ingham, as member and Chair, representing Republicans, succeeding Mr. Daniel J. Gustafson of Haslett, who has resigned, for a term beginning on December 16, 2002 and expiring on June 12, 2004.

Sincerely,  
John Engler  
Governor

Senator Emmons moved that rule 2.104 be suspended to permit immediate consideration of the appointment.

The motion prevailed, a majority of the members serving voting therefor.

Senator Emmons moved that the Senate advise and consent to the appointment.

The question being on advising and consenting to the said appointment to office,

The Senate advised and consented to the said appointment to office, a majority of the members serving voting therefor, as follows:

**Roll Call No. 947**

**Yeas—33**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hoffman	Peters	Van Regenmorter
Dunaskiss	Johnson	Sanborn	Young
Emerson			

**Nays—1**

Hart

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

By unanimous consent the Senate returned to the order of  
**Motions and Communications**

Senator Emmons moved that the Committee on Banking and Financial Institutions be discharged from further consideration of the following bill:

**House Bill No. 5641, entitled**

A bill to regulate the business of deferred presentment services; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

The motion prevailed, a majority of the members serving voting therefor, and the bill was placed on the order of General Orders.

Senator Emmons moved that the rules be suspended and that the following bill, now on the order of General Orders, be placed on the General Orders calendar for consideration today:

**House Bill No. 5641**

The motion prevailed, a majority of the members serving voting therefor.

Senator Shugars asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Shugars' statement is as follows:

I would like to introduce a couple of constituents from the Kalamazoo area. Kitty Gelling and her son Grant are from Kalamazoo. He is a freshman at Kalamazoo Christian High School. If they could stand up, we could give them a warm welcome to their State Capitol. They are in the east balcony.

By unanimous consent the Senate proceeded to the order of  
**Third Reading of Bills**

Senator Emmons moved that the following bills be placed at the head of the Third Reading of Bills calendar:

**House Bill No. 5371**

**House Bill No. 5372**

**House Bill No. 5984**

**House Bill No. 5743**

**House Bill No. 5947**

**House Bill No. 5999**

**House Bill No. 5540**

**House Bill No. 5680**

**House Bill No. 5728**

**House Bill No. 5729**

**House Bill No. 5730**

**House Bill No. 5049**

**House Bill No. 6333**

**House Bill No. 6428**

**House Bill No. 5296**

**House Bill No. 5297**

**House Bill No. 5858**

**House Bill No. 5403**

**House Bill No. 4607**

**House Bill No. 6327**

**House Bill No. 6448**

**House Bill No. 6256**

**House Bill No. 6260**

**House Bill No. 5456**

**House Bill No. 5465**

**House Bill No. 4007**

The motion prevailed.

The following bill was read a third time:

**House Bill No. 5371, entitled**

A bill to amend 1973 PA 116, entitled “An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,” (MCL 722.111 to 722.128) by adding section 11b.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 948**

**Yeas—33**

Bennett	Garcia	Koivisto	Schuette
Bullard	Gast	Leland	Schwarz
Byrum	Goschka	McCotter	Shugars
DeBeaussaert	Gougeon	McManus	Sikkema
DeGrow	Hammerstrom	Miller	Smith
Dingell	Hart	North	Stille
Dunaskiss	Hoffman	Peters	Van Regenmorter
Emerson	Johnson	Sanborn	Young
Emmons			

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—1**

Cherry

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor. The Senate agreed to the title of the bill.

The following bill was read a third time:

**House Bill No. 5372, entitled**

A bill to amend 1975 PA 238, entitled “Child protection law,” by amending sections 2, 3, 7, 8a, and 8d (MCL 722.622, 722.623, 722.627, 722.628a, and 722.628d), sections 2, 7, and 8d as amended by 2000 PA 45, section 3 as amended by 2002 PA 10, and section 8a as added by 1992 PA 39.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 949**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema

DeBeaussaert  
DeGrow  
Dingell  
Dunaskiss  
Emerson

Gougeon  
Hammerstrom  
Hart  
Hoffman  
Johnson

Miller  
North  
Peters  
Sanborn

Smith  
Stille  
Van Regenmorter  
Young

**Nays—0**

**Excused—4**

Murphy

Scott

Steil

Vaughn

**Not Voting—0**

In The Chair: President

Senator Emmons moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts.”.

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5984, entitled**

A bill to amend 1975 PA 238, entitled “Child protection law,” by amending sections 2, 3, and 11 (MCL 722.622, 722.623, and 722.631), section 2 as amended by 2000 PA 45 and section 3 as amended by 2002 PA 10.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 950**

**Yeas—33**

Bennett  
Bullard  
Byrum  
DeBeaussaert  
DeGrow  
Dingell  
Dunaskiss  
Emerson  
Emmons

Garcia  
Gast  
Goschka  
Gougeon  
Hammerstrom  
Hart  
Hoffman  
Johnson

Koivisto  
Leland  
McCotter  
McManus  
Miller  
North  
Peters  
Sanborn

Schuette  
Schwarz  
Shugars  
Sikkema  
Smith  
Stille  
Van Regenmorter  
Young

**Nays—0**

**Excused—4**

Murphy

Scott

Steil

Vaughn

**Not Voting—1**

Cherry

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts.”.

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5743, entitled**

A bill to amend 1893 PA 206, entitled “The general property tax act,” by amending section 53b (MCL 211.53b), as amended by 2000 PA 284, and by adding section 7gg.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 951****Yeas—34**

Bennett

Emmons

Koivisto

Schuette

Bullard

Garcia

Leland

Schwarz

Byrum

Gast

McCotter

Shugars

Cherry

Goschka

McManus

Sikkema

DeBeaussaert

Gougeon

Miller

Smith

DeGrow

Hammerstrom

North

Stille

Dingell

Hart

Peters

Van Regenmorter

Dunaskiss

Hoffman

Sanborn

Young

Emerson

Johnson

**Nays—0****Excused—4**

Murphy

Scott

Steil

Vaughn

**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5947, entitled**

A bill to amend 1893 PA 206, entitled “The general property tax act,” by amending section 44 (MCL 211.44), as amended by 2002 PA 479.

The question being on the passage of the bill,

Senator Cherry offered the following amendment:

1. Amend page 3, line 1, after “LAST” by striking out the balance of the sentence and inserting “2 BUSINESS DAYS IN DECEMBER UNLESS THE TOWNSHIP HAS AN ARRANGEMENT WITH A LOCAL FINANCIAL INSTITUTION TO RECEIVE TAXES ON BEHALF OF THE TOWNSHIP TREASURER AND TO FORWARD THAT PAYMENT TO THE TOWNSHIP TREASURER ON THE NEXT BUSINESS DAY. A PAYMENT RECEIVED BY THE LOCAL FINANCIAL INSTITUTION BY DECEMBER 31 IS CONSIDERED TO BE RECEIVED BY THE TOWNSHIP TREASURER WITHIN THAT CALENDAR YEAR. NOTIFICATION OF WHICH FINANCIAL INSTITUTIONS WILL RECEIVE TAXES SHALL BE PRINTED ON THE TAX BILL.”.

The amendment was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 952**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5999, entitled**

A bill to amend 1956 PA 218, entitled “The insurance code of 1956,” by amending section 4072 (MCL 500.4072), as amended by 1986 PA 318.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 953**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

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

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5540, entitled**

A bill to amend 1995 PA 29, entitled “Uniform unclaimed property act,” by amending section 16 (MCL 567.236).

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 954**

**Yeas—22**

Bennett	Gast	McCotter	Schwarz
Bullard	Gougeon	McManus	Shugars
DeGrow	Hammerstrom	North	Sikkema
Dunaskiss	Hoffman	Sanborn	Stille
Emmons	Johnson	Schuette	Van Regenmorter
Garcia	Leland		

**Nays—12**

Byrum	Dingell	Hart	Peters
Cherry	Emerson	Koivisto	Smith
DeBeaussaert	Goschka	Miller	Young

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President



The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act concerning unclaimed property; to provide for the reporting and disposition of unclaimed property; to make uniform the law concerning unclaimed property; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts;”.

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5680, entitled**

A bill to amend 1945 PA 47, entitled “An act to authorize 2 or more cities, townships, and villages, or any combination of cities, townships, and villages, to incorporate a hospital authority for planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating 1 or more community hospitals and related buildings or structures and related facilities; to provide for the sale, lease, or other transfer of a hospital owned by a hospital authority to a nonprofit corporation established under the laws of this state for no or nominal monetary consideration; to define hospitals and community hospitals; to provide for changes in the membership therein; to authorize the cities, townships, and villages to levy taxes for community hospital purposes; to provide for the issuance of bonds; to provide for the pledge of assessments; to provide for borrowing money for operation and maintenance and issuing notes for operation and maintenance; to validate elections heretofore held and notes heretofore issued; to validate bonds heretofore issued; to authorize condemnation proceedings; to grant certain powers of a body corporate; to validate and ratify the organization, existence, and membership of entities acting as hospital authorities under the act and the actions taken by hospital authorities and by the members of the hospital authorities; and to prescribe penalties and provide remedies,” by amending sections 5, 6, and 7 (MCL 331.5, 331.6, and 331.7), section 5 as amended by 1984 PA 17 and section 7 as amended by 1983 PA 78.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 955**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor. The Senate agreed to the title of the bill.

The following bill was read a third time:

**House Bill No. 5728, entitled**

A bill to amend 1965 PA 314, entitled “Public employee retirement system investment act,” by amending section 20h (MCL 38.1140h), as amended by 1996 PA 485, and by adding section 20m.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 956**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act to authorize the investment of assets of public employee retirement systems or plans created and established by the state or any political subdivision; to provide for the payment of certain costs and investment expenses; to authorize investment in variable rate interest loans; to define and limit the investments which may be made by an investment fiduciary with the assets of a public employee retirement system; and to prescribe the powers and duties of investment fiduciaries and certain state departments and officers.”.

The Senate agreed to the full title.

Senator Miller asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Miller’s statement is as follows:

It’s a special day for me today, now that we’re kind of winding down our careers. I have two special members of my family here. We’re always very proud of our families, and they are so much a part of our campaigns and our careers. I just want to say that the one sad thing in politics is that your children are always—besides us having to live under a microscope—under a microscope. I’ve always preached to them “Be sure you’re home at this hour,” “Don’t go to that party,” and “I don’t want to read about you in the paper.” I just want to say that my four children turned out fabulous, and they’re a real honor for me and my wife.

I was talking to the good Senator from Dearborn. Back in 1980, he chaired the Transportation Committee, and at that time, child restraint seats just came into law. I didn’t have one, but I had a young baby at home. I said to him, “You know what? I’m going to borrow that seat for my son.”

Lo and behold, my son Arthur is here today. He makes me very proud to say he's my son and a recent graduate of Michigan State University. He helped me get through a lot of campaigns. I'm very proud.

Like a son to me is my son-in-law who made me a grandparent for the first time. We're trying to convince him that Michigan is the right state, not Illinois—where he went. Now he practices where Dr. Schwarz started out at Oakwood Hospital. I'm very proud of him. He's like a son.

I wish my other son, who's taking his finals at Michigan State, could be here today—but not.

I just want to say that I'm very proud of these two young men and especially for all the years my son had to listen to me give those sermons every night. "Make sure you don't embarrass me. I don't want to read about it in the newspaper." Everyone of you know you tell your children the same thing; that for some reason, they live under a microscope. He's been a great son, along with my other three children, and I'm just glad they could be here on one of these final days.

We welcome my son Art and my son-in-law Matthew to the Michigan Senate.

The following bill was read a third time:

**House Bill No. 5729, entitled**

A bill to amend 1968 PA 2, entitled "Uniform budgeting and accounting act," by amending section 4 (MCL 141.424), as amended by 2000 PA 493.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 957**

**Yeas—33**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Goschka	McCotter	Shugars
Cherry	Gougeon	McManus	Sikkema
DeBeaussaert	Hammerstrom	Miller	Smith
DeGrow	Hart	North	Stille
Dingell	Hoffman	Peters	Van Regenmorter
Dunaskiss	Johnson	Sanborn	Young
Emerson			

**Nays—1**

Gast

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

"An act to provide for the formulation and establishment of uniform charts of accounts and reports in local units of government; to define local units of government; to provide for the examination of the books and accounts of local

units of government; to provide for annual financial reports from local units of government; to provide for the administration of this act; to prescribe the powers and duties of the state treasurer, the attorney general, the library of Michigan and depository libraries, and other officers and entities; to provide penalties for violation of certain requirements of this act; to provide for meeting the expenses authorized by this act; to provide a uniform budgeting system for local units; and to prohibit deficit spending by a local unit of government.”

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5730, entitled**

A bill to amend 1851 PA 156, entitled “An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act,” by amending section 12a (MCL 46.12a), as amended by 1998 PA 502.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 958**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor. The Senate agreed to the title of the bill.

The following bill was read a third time:

**House Bill No. 5049, entitled**

A bill to amend 1976 PA 451, entitled “The revised school code,” (MCL 380.1 to 380.1852) by adding section 1279d.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 959**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, and intermediate school districts; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, and intermediate school districts; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts.”

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 6333, entitled**

A bill to amend 1978 PA 368, entitled “Public health code,” by amending sections 16105, 16106, 16108, 16128, 16163, 16174, 16186, 16226, 16261, 16323, 16608, and 17031 (MCL 333.16105, 333.16106, 333.16108, 333.16128, 333.16163, 333.16174, 333.16186, 333.16226, 333.16261, 333.16323, 333.16608, and 333.17031), section 16106 as amended by 1997 PA 153, section 16108 as amended and section 16323 as added by 1993 PA 80, section 16174 as amended by 1998 PA 227, section 16186 as amended by 2002 PA 441, section 16226 as amended by 2000 PA 29, section 16608 as amended by 1990 PA 216, and section 17031 as amended by 1990 PA 248.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 960**

**Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz

Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson		

**Nays—0****Excused—4**

Murphy	Scott	Steil	Vaughn
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**Not Voting—0**

In The Chair: President

Senator Emmons moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 6428, entitled**

A bill to amend 1966 PA 28, entitled “An act to authorize the board of trustees of police and firemen or municipal employees retirement systems to increase benefits,” by amending the title and sections 1 and 2 (MCL 38.571 and 38.572).

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 961****Yeas—34**

Bennett	Emmons	Koivisto	Schuette
Bullard	Garcia	Leland	Schwarz
Byrum	Gast	McCotter	Shugars

Cherry  
DeBeaussaert  
DeGrow  
Dingell  
Dunaskiss  
Emerson

Goschka  
Gougeon  
Hammerstrom  
Hart  
Hoffman  
Johnson

McManus  
Miller  
North  
Peters  
Sanborn

Sikkema  
Smith  
Stille  
Van Regenmorter  
Young

**Nays—0**

**Excused—4**

Murphy

Scott

Steil

Vaughn

**Not Voting—0**

In The Chair: President

Senator Emmons moved that the bill be given immediate effect.  
The motion prevailed, 2/3 of the members serving voting therefor.  
The Senate agreed to the title of the bill.

Senator Young stated that had he been present when the votes were taken on December 3 on the passage of the following bills, he would have voted “yea”:

**Senate Bill No. 1437**  
**Senate Bill No. 1438**

Senator Young stated that had he been present when the votes were taken on December 4 on the passage of the following bills, he would have voted “yea”:

**Senate Bill No. 1396**  
**House Bill No. 5552**  
**Senate Bill No. 795**  
**Senate Bill No. 1506**  
**Senate Bill No. 1203**  
**House Bill No. 6478**  
**House Bill No. 6479**  
**House Bill No. 6480**  
**House Bill No. 6481**  
**Senate Bill No. 1505**

Senator Young stated that had he been present when the votes were taken on December 5 on the passage of the following bills, he would have voted “yea”:

**Senate Bill No. 63**  
**Senate Bill No. 1398**  
**Senate Bill No. 1498**  
**Senate Bill No. 1499**  
**Senate Bill No. 614**  
**Senate Bill No. 1507**  
**Senate Bill No. 1519**  
**Senate Bill No. 694**  
**House Bill No. 4042**  
**House Bill No. 4632**  
**Senate Bill No. 1500**  
**House Bill No. 5705**

Senator Young stated that had he been present when the vote was taken on December 5 on the adoption of the following concurrent resolution, he would have voted "yea":

**Senate Concurrent Resolution No. 75**

Senator Young stated that had he been present when the vote was taken on December 3 on the passage of the following bill, he would have voted "nay":

**Senate Bill No. 1400**

Senator Young stated that had he been present when the vote was taken on December 4 on the passage of the following bill, he would have voted "nay":

**Senate Bill No. 1422**

Senator Young stated that had he been present when the vote was taken on December 5 on the passage of the following bill, he would have voted "nay":

**Senate Bill No. 1213**

**Recess**

Senator Emmons moved that the Senate recess until 2:00 p.m.  
The motion prevailed, the time being 12:06 p.m.

The Senate reconvened at the expiration of the recess and was called to order by the President pro tempore, Senator Schwarz.

**Recess**

Senator Emmons moved that the Senate recess subject to the call of the Chair.  
The motion prevailed, the time being 2:01 p.m.

3:24 p.m.

The Senate was called to order by the President pro tempore, Senator Schwarz.

During the recess, Senator Scott entered the Senate Chamber.

By unanimous consent the Senate returned to the order of

**Messages from the House**

**House Bill No. 5705, entitled**

A bill to make, supplement, and adjust appropriations for various state departments and agencies for the fiscal year ending September 30, 2002 and the fiscal year ending September 30, 2003; to provide for the expenditure of the appropriations; and to repeal acts and parts of acts.

The House of Representatives has amended the Senate substitute (S-2) as follows:

1. Amend page 38, following line 9, following subsection (3), by inserting:

**“DEPARTMENT OF STATE POLICE**

Sec. 1651. It is the intent of the legislature that up to 10% of federal funds received by the state of Michigan for homeland security equipment upgrade grants to local units be allocated for construction of an upgraded Detroit crime lab.”.

2. Amend page 38, following line 13, by inserting:

**“MISCELLANEOUS**

Sec. 1850. The appropriations in sections 153(3), 157(3) through (20), and 1275 and the appropriation for at-risk student success program in section 153(2) are not appropriated and shall not be expended unless, pursuant to state statute enacted into law by January 15, 2003 and effective prior to January 1, 2004, the election of the members of the board of trustees for Michigan State University, the board of regents for the University of Michigan, and the board of



governors for Wayne State University shall be by the electors from districts that are numbered and constituted the same as the 4 judicial districts for the election of judges of the court of appeals set forth in section 302 of the revised judicature act of 1961, 1961 PA 236, MCL 600.302.”.

The House of Representatives has concurred in the Senate substitute (S-2) as amended.

Pending the order that, under rule 3.202, the bill be laid over one day,

Senator Emmons moved that the rule be suspended.

The motion prevailed, a majority of the members serving voting therefor.

The question being on concurring in the House amendments made to the Senate substitute,

The amendments were not concurred in, a majority of the members serving not voting therefor, as follows:

**Roll Call No. 962**

**Yeas—0**

**Nays—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

By unanimous consent the Senate returned to the order of

**Motions and Communications**

Senator Emmons moved that a respectful message be sent to the House of Representatives requesting the return of the following bill:

**House Bill No. 5947**

The motion prevailed.

By unanimous consent the Senate returned to the order of

**Third Reading of Bills**

The following bill was read a third time:

**House Bill No. 5296, entitled**

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” by amending section 145c (MCL 750.145c), as amended by 1994 PA 444.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 963****Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0****Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Emmons moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“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.”

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5297, entitled**

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 16g of chapter XVII (MCL 777.16g), as amended by 2002 PA 47.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 964****Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0**

**Excused—3**

Murphy

Steil

Vaughn

**Not Voting—0**

In The Chair: Schwarz

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“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.”.

The Senate agreed to the full title.

By unanimous consent the Senate returned to consideration of the following bill:

**House Bill No. 5296, entitled**

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” by amending section 145c (MCL 750.145c), as amended by 1994 PA 444.

(This bill was passed earlier today and given immediate effect. See p. 2389.)

Senator Emmons moved to reconsider the vote by which the bill was given immediate effect.

The motion prevailed.

The question being on the motion to give the bill immediate effect,

The motion did not prevail, 2/3 of the members serving not voting therefor.

The following bill was read a third time:

**House Bill No. 5858, entitled**

A bill to amend 1931 PA 328, entitled “The Michigan penal code,” by amending section 503 (MCL 750.503).

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 965**

**Yeas—35**

Bennett  
Bullard  
Byrum  
Cherry

Emmons  
Garcia  
Gast  
Goschka

Koivisto  
Leland  
McCotter  
McManus

Schwarz  
Scott  
Shugars  
Sikkema

DeBeussaert  
DeGrow  
Dingell  
Dunaskiss  
Emerson

Gougeon  
Hammerstrom  
Hart  
Hoffman  
Johnson

Miller  
North  
Peters  
Sanborn  
Schuette

Smith  
Stille  
Van Regenmorter  
Young

**Nays—0**

**Excused—3**

Murphy

Steil

Vaughn

**Not Voting—0**

In The Chair: Schwarz

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“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.”

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 5403, entitled**

A bill to amend 1975 PA 228, entitled “Single business tax act,” by amending section 4 (MCL 208.4), as amended by 1999 PA 115.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 966**

**Yeas—34**

Bennett  
Bullard  
Byrum  
Cherry  
DeBeussaert  
DeGrow  
Dingell  
Dunaskiss  
Emerson

Emmons  
Garcia  
Gast  
Goschka  
Gougeon  
Hammerstrom  
Hart  
Hoffman  
Johnson

Koivisto  
Leland  
McCotter  
McManus  
Miller  
North  
Peters  
Sanborn

Schuette  
Schwarz  
Scott  
Shugars  
Sikkema  
Stille  
Van Regenmorter  
Young

**Nays—1**

Smith

**Excused—3**

Murphy

Steil

Vaughn

**Not Voting—0**

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation.”.

The Senate agreed to the full title.

Senator Miller asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Miller’s statement is as follows:

I know this is a hectic schedule. I had the privilege since this past year to have a young man from Michigan State University work as an intern in my office. He dedicated a lot of hours and a lot of valuable service for my constituents. He’s going to be graduating in the spring, and he just completed taking the law school admission test this past weekend. So we’re going to have another scholar or another lawyer out there soon. He’s been a great student and a great help to my office. I just want to say thank you, Dan McDonald, for the great service and hope that my colleagues can give him a warm holiday welcome.

The following bill was read a third time:

**House Bill No. 4607, entitled**

A bill to amend 1956 PA 218, entitled “The insurance code of 1956,” (MCL 500.100 to 500.8302) by adding section 2213d.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 967**

**Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0**

**Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect,  
The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 6327, entitled**

A bill to amend 1956 PA 218, entitled “The insurance code of 1956,” by amending sections 2409, 2409a, and 2409c (MCL 500.2409, 500.2409a, and 500.2409c), sections 2409 and 2409a as amended by 1993 PA 200 and section 2409c as added by 1986 PA 318.

The question being on the passage of the bill,  
Senator Bullard offered the following substitute:  
Substitute (S-3).

The substitute was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 968**

**Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0**

**Excused—3**

Murphy

Steil

Vaughn

**Not Voting—0**

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Senator Bullard offered to amend the title to read as follows:

A bill to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 224b, 2409, 2409a, 2409c, 3515, 3519, and 3528 (MCL 500.224b, 500.2409, 500.2409a, 500.2409c, 500.3515, 500.3519, and 500.3528), section 224b as added and sections 3515 and 3519 as amended by 2002 PA 304, sections 2409 and 2409a as amended by 1993 PA 200, section 2409c as added by 1986 PA 318, and section 3528 as added by 2000 PA 252.

The amendment to the title was adopted.

The Senate agreed to the title as amended.

The following bill was read a third time:

**House Bill No. 6448, entitled**

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 1202 (MCL 500.1202), as amended by 2001 PA 228, and by adding section 402c.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 969****Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0****Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.



The following bill was read a third time:

**House Bill No. 6256, entitled**

A bill to amend 1965 PA 232, entitled “Agricultural commodities marketing act,” by amending the title and sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 17, 19, 21, 22, 23, and 24 (MCL 290.652, 290.653, 290.654, 290.655, 290.657, 290.658, 290.659, 290.660, 290.661, 290.667, 290.669, 290.671, 290.672, 290.673, and 290.674), sections 2, 3, 5, 7, 9, 10, 21, and 22 as amended by 1996 PA 216, section 8 as amended by 1997 PA 20, and sections 19, 23, and 24 as amended by 1980 PA 196; and to repeal acts and parts of acts.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 970**

**Yeas—34**

Bennett	Garcia	Leland	Schwarz
Bullard	Gast	McCotter	Scott
Byrum	Goschka	McManus	Shugars
Cherry	Gougeon	Miller	Sikkema
DeBeaussaert	Hammerstrom	North	Smith
DeGrow	Hart	Peters	Stille
Dingell	Hoffman	Sanborn	Van Regenmorter
Dunaskiss	Johnson	Schuette	Young
Emmons	Koivisto		

**Nays—0**

**Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—1**

Emerson

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was concurred in, 2/3 of the members serving voting therefor.

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

“An act relating to the marketing of agricultural commodities; to provide for marketing programs, agreements, referendums by producers, assessments on producers, and commodity committees; and to prescribe the functions of the department of agriculture relative thereto including powers of enforcement of this act; and to prescribe penalties.”

The Senate agreed to the full title.

The following bill was read a third time:

**House Bill No. 6260, entitled**

A bill to amend 1961 PA 236, entitled “Revised judicature act of 1961,” by amending sections 601 and 841 (MCL 600.601 and 600.841), section 601 as amended by 1996 PA 388 and section 841 as amended by 2000 PA 56, and by adding chapter 4 and section 8304.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 971****Yeas—24**

Bennett	Emerson	Hoffman	Sanborn
Bullard	Emmons	Johnson	Schwarz
Cherry	Garcia	McCotter	Shugars
DeBeussaert	Gast	McManus	Sikkema
DeGrow	Gougeon	Miller	Stille
Dunaskiss	Hammerstrom	Peters	Van Regenmorter

**Nays—11**

Byrum	Hart	North	Smith
Dingell	Koivisto	Schuetter	Young
Goschka	Leland	Scott	

**Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Van Regenmorter offered to amend the title to read as follows:

A bill to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 601 and 841 (MCL 600.601 and 600.841), section 601 as amended by 1996 PA 388 and section 841 as amended by 2000 PA 56, and by adding chapter 4 and sections 425 and 8304.

The amendment to the title was adopted.

The Senate agreed to the title as amended.

Senator Schuette asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Schuette’s statement, in which Senator North concurred, is as follows:

I rise in opposition to this bill. I have great respect for those who take a different view on this court reorganization concept—House Bill No. 6260. For the author of the legislation in the House and those who support it, I have great regard.

I need to make a couple of acknowledgments on this bill. First, particularly in more metropolitan, heavily populated areas, there’s a huge increase in the caseload on the docket on child-related issues—on family-related issues, which in many respects, again in more urban areas, can have a huge impact on the division of responsibility between and among the circuits and the judges in our judicial system.

What has been done for some time now is that there have been temporary assignments of judges. There is a constitutional question presented by this fact. The issues that the temporary assignment of judges cannot be permanent without incurring a severe constitutional flaw and is violative of the Michigan Constitution. So the issue of temporary assignment of judges to help the caseload because of big problems in certain regions with respect to the increased number of cases on the docket has to be dealt with. The question is how? I’ve spent a lot of time in the past months listening to judges, and from the region I’ve come to know well, this bill has met with opposition and a resounding thud.

Now there are two key reasons I am opposed to this. Number one, in this lame duck session, having this court reorganization bill, by passing it now and if there needs to be some adjustments or some tailoring in the future, a great many of the legislators in the Senate or in the House won't be here in the future to make those fine tune-ups that might be required. This may frankly require, in my opinion, greater debate with the new Legislature in the House and the Senate because oftentimes in any bill that we deal with there can be a bill passed and then some adjustments might need to be made. So I'm a little concerned that we're doing this in lame duck.

The second issue is more of a substantive nature. I'm very concerned that Article 6 in our Constitution would require that any changes in and among the districts—between the district court or among the district court, circuit court, and the probate court—must be done constitutionally, not by statute. To their credit, many of those—not all—but many of those who are advocating this change on court reorganization have acknowledged openly that they would prefer it be done by constitutional means, not statutory means. I certainly have to give great credit to the chairman of the Senate Judiciary Committee, Senator Van Regenmorter, who has been very fair as he's steered this bill through the committee system.

It seems to me that by attempting to blur the distinctions or by blurring the distinctions among the district court, probate court, and circuit court, we have to do that by constitutional amendment, not by statute. That's my biggest concern. I'll be voting "no" on this bill, and we should not blur these lines except for a vote of the people—a constitutional amendment. If that was the decision that everyone made, fine. But as to a statutory fix, I think that's not appropriate at this point in time.

The following bill was read a third time:

**House Bill No. 5456, entitled**

A bill to authorize the state administrative board to convey certain property in Jackson county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 972**

**Yeas—35**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	North	Stille
Dingell	Hart	Peters	Van Regenmorter
Dunaskiss	Hoffman	Sanborn	Young
Emerson	Johnson	Schuette	

**Nays—0**

**Excused—3**

Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

The Senate agreed to the title of the bill.

Senator Emmons moved that Senator North be temporarily excused from the balance of today’s session. The motion prevailed.

The following bill was read a third time:

**House Bill No. 5465, entitled**

A bill to authorize the state administrative board to convey certain property in Jackson county; to prescribe conditions for the conveyance; and to provide for disposition of the revenue from the conveyance.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 973**

**Yeas—34**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	Peters	Stille
Dingell	Hart	Sanborn	Van Regenmorter
Dunaskiss	Hoffman	Schuette	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	North	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Emmons moved that the bill be given immediate effect. The motion prevailed, 2/3 of the members serving voting therefor. The Senate agreed to the title of the bill.

Senator Emmons moved that the following bill be given immediate effect:

**House Bill No. 5456**

The motion prevailed, 2/3 of the members serving voting therefor.

The following bill was read a third time:

**House Bill No. 4007, entitled**

A bill to amend 1956 PA 218, entitled “The insurance code of 1956,” by amending section 3104 (MCL 500.3104), as amended by 2001 PA 3.

The question being on the passage of the bill,

Senator Bullard offered the following amendment:

1. Amend page 11, following line 25, by inserting:

“Enacting section 1. This amendatory act takes effect July 1, 2003.”.

The amendment was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 974****Yeas—32**

Bennett	Emerson	Hoffman	Schwarz
Bullard	Emmons	Koivisto	Scott
Byrum	Garcia	McCotter	Shugars
Cherry	Gast	McManus	Sikkema
DeBeussaert	Goschka	Miller	Smith
DeGrow	Gougeon	Peters	Stille
Dingell	Hammerstrom	Sanborn	Van Regenmorter
Dunaskiss	Hart	Schuette	Young

**Nays—2**

Johnson	Leland
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**Excused—4**

Murphy	North	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Pursuant to Joint Rule 20, the full title of the act shall be inserted to read as follows:

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

The Senate agreed to the full title.

Senator Emmons moved that the following bill be placed at the head of the Third Reading of Bills calendar:

**House Bill No. 6128**

The motion prevailed.

The following bill was read a third time:

**House Bill No. 6128, entitled**

A bill to amend 1939 PA 3, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts," (MCL 460.1 to 460.10cc) by adding sections 9 and 9b.

The question being on the passage of the bill,

Senator Byrum offered the following amendment:

1. Amend page 6, following line 15, by striking out all of section 10a.

The amendment was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 975**

**Yeas—34**

Bennett	Emmons	Koivisto	Schwarz
Bullard	Garcia	Leland	Scott
Byrum	Gast	McCotter	Shugars
Cherry	Goschka	McManus	Sikkema
DeBeaussaert	Gougeon	Miller	Smith
DeGrow	Hammerstrom	Peters	Stille
Dingell	Hart	Sanborn	Van Regenmorter
Dunaskiss	Hoffman	Schuette	Young
Emerson	Johnson		

**Nays—0**

**Excused—4**

Murphy	North	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Emmons moved that the bill be given immediate effect.

The motion prevailed, 2/3 of the members serving voting therefor.

The Senate agreed to the title of the bill.

By unanimous consent the Senate returned to the order of  
**Motions and Communications**

The following communication was received and read:  
 Office of the Senate Majority Leader

December 11, 2002

Pursuant to Senate Rule 1.105, I hereby appoint the following members to the following conference committee:  
 HB 5705            Senator Gast  
                       Senator DeGrow  
                       Senator Smith

Sincerely,  
 Dan L. DeGrow  
 Senate Majority Leader

The communication was referred to the Secretary for record.

Senator Emmons moved that the Committee on Banking and Financial Institutions be discharged from further consideration of the following bills:

**House Bill No. 6121, entitled**

A bill to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide for remedies.

**House Bill No. 6122, entitled**

A bill to amend 1987 PA 173, entitled "Mortgage brokers, lenders, and servicers licensing act," (MCL 445.1651 to 445.1684) by adding section 24a.

**House Bill No. 6123, entitled**

A bill to amend 1925 PA 285, entitled "An act to provide for the organization, operation, and supervision of credit unions; to provide for the conversion of a state credit union into a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States or any other federally insured depository institution and for the conversion of a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States or any other federally insured depository institution into a state credit union; and to provide for the merger of credit unions organized and supervised under the laws of this state, credit unions organized and supervised under the laws of any other state or territory of the United States, and federal credit unions," (MCL 490.1 to 490.31) by adding section 10a.

**House Bill No. 6124, entitled**

A bill to amend 1996 PA 354, entitled "Savings bank act," (MCL 487.3101 to 487.3804) by adding section 435.

The motion prevailed, a majority of the members serving voting therefor, and the bills were placed on the order of General Orders.

Senator Emerson requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the members present voting therefor.

The motion prevailed, a majority of the members voting therefor, as follows:

**Roll Call No. 976**

**Yeas—21**

Bennett	Gast	Johnson	Schwarz
Bullard	Goschka	McCotter	Shugars
DeGrow	Gougeon	McManus	Sikkema
Dunaskiss	Hammerstrom	Sanborn	Stille
Emmons	Hoffman	Schuette	Van Regenmorter
Garcia			

**Nays—13**

Byrum	Emerson	Leland	Scott
Cherry	Hart	Miller	Smith
DeBeaussaert	Koivisto	Peters	Young
Dingell			

**Excused—4**

Murphy	North	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Emmons moved that the rules be suspended and that the following bills, now on the order of General Orders, be placed on the General Orders calendar for consideration today:

**House Bill No. 6121**

**House Bill No. 6122**

**House Bill No. 6123**

**House Bill No. 6124**

The motion prevailed, a majority of the members serving voting therefor.

Senator North entered the Senate Chamber.

Senator Emmons moved that Senator Gougeon be excused from the balance of today's session.

The motion prevailed.

By unanimous consent the Senate returned to the order of

**General Orders**

Senator Emmons moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President pro tempore, Senator Schwarz, designated Senator Goschka as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having resumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bills:

**House Bill No. 6446, entitled**

A bill to amend 1950 (Ex Sess) PA 27, entitled "Motor vehicle sales finance act," by amending sections 13 and 18 (MCL 492.113 and 492.118), section 13 as amended by 1990 PA 27 and section 18 as amended by 1995 PA 166.

**House Bill No. 6121, entitled**

A bill to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide for remedies.

The bills were placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:

**House Bill No. 4492, entitled**

A bill to amend 1971 PA 140, entitled "Glenn Steil state revenue sharing act of 1971," by amending sections 11 and 13 (MCL 141.911 and 141.913), as amended by 1998 PA 532.



Substitute (S-1).

The following is the amendment to the substitute recommended by the Committee of the Whole:

1. Amend page 4, following line 2, by inserting:

“Sec. 12. (1) For state fiscal years before the 1996-1997 state fiscal year, the department of treasury shall cause to be paid to each city, village, and township its share, computed on a per capita basis, during each August, November, February, and May, of the collections designated for assistance to townships, cities, and villages under section 10 of article IX of the state constitution of 1963 from the sales tax for the quarter periods ending the prior June 30, September 30, December 31, and March 31 that are available for distribution to cities, villages, and townships.

(2) For state fiscal years before the 1996-1997 state fiscal year, during each calendar year, the department of treasury shall cause to be advanced and paid in June to cities, villages, and townships on a per capita basis \$9,500,000.00 of the amount that would otherwise be paid in August pursuant to subsection (1).

(3) For state fiscal years after the 1995-1996 state fiscal year AND BEFORE THE 2003-2004 STATE FISCAL YEAR, the department shall cause to be paid to each city, village, and township its share, computed on a per capita basis, during each October, December, February, April, June, and August, the collections designated for assistance to cities, villages, and townships under section 10 of article IX of the state constitution of 1963 from the sales tax, the collections that are available for distribution to cities, villages, and townships. Payments under this subsection shall be based on collections from the sales tax at a rate of 4% in the 2-month period ending the prior August 31, October 31, December 31, February 28, April 30, and June 30.

(4) FOR STATE FISCAL YEARS AFTER THE 2002-2003 STATE FISCAL YEAR, THE DEPARTMENT SHALL CAUSE TO BE PAID TO EACH CITY, VILLAGE, AND TOWNSHIP ITS SHARE OF THE SALES TAX COLLECTIONS DESIGNATED FOR ASSISTANCE TO CITIES, VILLAGES, AND TOWNSHIPS UNDER SECTION 10 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 FROM THE SALES TAX. PAYMENTS UNDER THIS SUBSECTION SHALL BE MADE DURING EACH OCTOBER, DECEMBER, FEBRUARY, APRIL, JUNE, AND AUGUST, BASED ON COLLECTIONS FROM THE SALES TAX AT A RATE OF 4% IN THE 2-MONTH PERIOD ENDING THE PRIOR AUGUST 31, OCTOBER 31, DECEMBER 31, FEBRUARY 28, APRIL 30, AND JUNE 30. THE PAYMENTS UNDER THIS SUBSECTION SHALL BE MADE FROM REVENUES COLLECTED DURING THE STATE FISCAL YEAR IN WHICH THE PAYMENTS ARE MADE.”.

The Senate agreed to the substitute, as amended, recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

**House Bill No. 5394, entitled**

A bill to amend 1978 PA 368, entitled “Public health code,” by amending sections 7401 and 7403 (MCL 333.7401 and 333.7403), as amended by 2001 PA 236.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 9, following line 18, by inserting:

“Enacting section 1. This amendatory act takes effect March 1, 2003.” and renumbering the remaining enacting section.

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with amendment, the following bill:

**House Bill No. 5395, entitled**

A bill to amend 1927 PA 175, entitled “The code of criminal procedure,” by amending section 34 of chapter IX, sections 1 and 2 of chapter XI, and sections 13m, 43, 45, and 57 of chapter XVII (MCL 769.34, 771.1, 771.2, 777.13m, 777.43, 777.45, and 777.57), section 34 of chapter IX and section 43 of chapter XVII as amended by 2000 PA 279, section 1 of chapter XI as amended by 2002 PA 483, section 2 of chapter XI as amended by 1998 PA 520, section 13m of chapter XVII as added by 2002 PA 30, section 45 of chapter XVII as added by 1998 PA 317, and section 57 of chapter XVII as amended by 1999 PA 227.

The following is the amendment recommended by the Committee of the Whole:

1. Amend page 19, following line 17, by inserting:

“Enacting section 1. This amendatory act takes effect March 1, 2003.” and renumbering the remaining enacting section.

The Senate agreed to the amendment recommended by the Committee of the Whole, and the bill as amended was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 6510, entitled**

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending section 34 (MCL 791.234), as amended by 1999 PA 191.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 6095, entitled**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7212, 7401, 7402, 7403, and 7404 (MCL 333.7212, 333.7401, 333.7402, 333.7403, and 333.7404), section 7212 as amended by 1998 PA 248, sections 7401 and 7403 as amended by 2001 PA 236, and sections 7402 and 7404 as amended by 2000 PA 314.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 6096, entitled**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 13m of chapter XVII (MCL 777.13m), as added by 2002 PA 30.

Substitute (S-2).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 4090, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 1344 (MCL 600.1344), as amended by 1982 PA 226.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 4551, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9948) by adding section 151d.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 4552, entitled**

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 321a (MCL 257.321a), as amended by 1999 PA 73.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 4553, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9948) by adding section 151e.

Substitute (S-1).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

The Committee of the Whole reported back to the Senate, favorably and with a substitute therefor, the following bill:  
**House Bill No. 4798, entitled**

A bill to amend 1961 PA 236, entitled “Revised judicature act of 1961,” by amending sections 2529 and 8371 (MCL 600.2529 and 600.8371), section 2529 as amended by 1999 PA 268 and section 8371 as amended by 1996 PA 388.

Substitute (S-2).

The Senate agreed to the substitute recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills.

By unanimous consent the Senate returned to the order of  
**Messages from the House**

**Senate Bill No. 380, entitled**

A bill to amend 1961 PA 236, entitled “Revised judicature act of 1961,” (MCL 600.101 to 600.9948) by adding sections 2973 and 2974.

The House of Representatives has substituted (H-5) the bill.

The House of Representatives has passed the bill as substituted (H-5), ordered that it be given immediate effect and amended the title to read as follows:

A bill 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 600.9948) by adding section 2974.

Pending the order that, under rule 3.202, the bill be laid over one day,

Senator Emmons moved that the rule be suspended.

The motion prevailed, a majority of the members serving voting therefor.

The question being on concurring in the substitute made to the bill by the House,

The substitute was not concurred in, a majority of the members serving not voting therefor, as follows:

**Roll Call No. 977**

**Yeas—13**

Byrum	Emerson	Leland	Scott
Cherry	Hart	Miller	Smith
DeBeaussaert	Koivisto	Peters	Young
Dingell			

**Nays—21**

Bennett	Gast	McCotter	Schwarz
Bullard	Goschka	McManus	Shugars
DeGrow	Hammerstrom	North	Sikkema
Dunaskiss	Hoffman	Sanborn	Stille
Emmons	Johnson	Schuette	Van Regenmorter
Garcia			

**Excused—4**

Gougeon	Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

The House of Representatives requested the return of

**Senate Bill No. 1401, entitled**

A bill to amend 1998 PA 58, entitled “Michigan liquor control code of 1998,” (MCL 436.1101 to 436.2303) by adding section 518.

Senator Emmons moved that the request of the House be granted.

The motion prevailed.

By unanimous consent the Senate returned to the order of

**Third Reading of Bills**

Senator Emmons moved that the following bills be placed at the head of the Third Reading of Bills calendar:

**House Bill No. 5364**

**House Bill No. 6079**

**House Bill No. 6447**

The motion prevailed.

The following bill was read a third time:

**House Bill No. 5364, entitled**

A bill to amend 1949 PA 300, entitled “Michigan vehicle code,” by amending sections 11 and 312e (MCL 257.11 and 257.312e), section 11 as amended by 1990 PA 154 and section 312e as amended by 2002 PA 534, and by adding section 248j.

The question being on the passage of the bill,

Senator Bullard offered the following substitute:

Substitute (S-7).

The question being on the adoption of the substitute,

Senator Bullard offered the following amendment to the substitute:

1. Amend page 10, line 14, after “VEHICLE” by striking out “OR BOAT TRAILER”.

The amendment to the substitute was adopted.

The substitute, as amended, was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 978**

**Yeas—25**

Bennett	Gast	Leland	Schuette
Bullard	Goschka	McCotter	Schwarz
DeGrow	Hammerstrom	McManus	Shugars
Dingell	Hoffman	Miller	Sikkema
Dunaskiss	Johnson	North	Stille
Emmons	Koivisto	Sanborn	Van Regenmorter
Garcia			

**Nays—8**

Byrum	DeBeaussaert	Hart	Smith
Cherry	Emerson	Peters	Young

**Excused—4**

Gougeon	Murphy	Steil	Vaughn
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**Not Voting—1**

Scott

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect,

The recommendation was not concurred in, 2/3 of the members serving not voting therefor.

Senator Bullard offered to amend the title to read as follows:

A bill 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 sections 11, 217, 235, 310, 312e, and 401 (MCL 257.11, 257.217, 257.235, 257.310, 257.312e, and 257.401), section 11 as amended by 1990 PA 154, section 217 as amended by 2002 PA 552, section 235 as amended by 1988 PA 470, section 310 as amended by 2002 PA 554, section 312e as amended by 2002 PA 534, and section 401 as amended by 1995 PA 98, and by adding sections 4c, 35c, and 248j.

The amendment to the title was adopted.

The Senate agreed to the title as amended.

The following bill was read a third time:

**House Bill No. 6079, entitled**

A bill to amend 1931 PA 328, entitled "Michigan penal code," by amending sections 16, 25, 33, 34, 44, 45, 50c, 57, 60, 64, 90c, 113, 114, 123, 125, 138, 140, 149, 150, 151, 153, 172, 173, 183, 184, 191, 192, 197a, 215, 217, 217c, 219, 220, 240, 263, 264, 287, 288, 294, 295, 298, 301, 302, 304, 305, 306, 314, 330, 331, 335, 335a, 354, 359, 368, 371, 375, 389, 393, 404, 407, 408, 410, 411a, 411d, 414, 428, 429, 430, 454, 466, 478, 482, 490a, 492, 502b, 508, 509, 519, 524, 537, 538, 540e, 540f, and 561 (MCL 750.16, 750.25, 750.33, 750.34, 750.44, 750.45, 750.50c, 750.57, 750.60, 750.64, 750.90c, 750.113, 750.114, 750.123, 750.125, 750.138, 750.140, 750.149, 750.150, 750.151, 750.153, 750.172, 750.173, 750.183, 750.184, 750.191, 750.192, 750.197a, 750.215, 750.217, 750.217c, 750.219, 750.220, 750.240, 750.263, 750.264, 750.287, 750.288, 750.294, 750.295, 750.298, 750.301, 750.302, 750.304, 750.305, 750.306, 750.314, 750.330, 750.331, 750.335, 750.335a, 750.354, 750.359, 750.368, 750.371, 750.375, 750.389, 750.393, 750.404, 750.407, 750.408, 750.410, 750.411a, 750.411d, 750.414, 750.428, 750.429, 750.430, 750.454, 750.466, 750.478, 750.482, 750.490a, 750.492, 750.502b, 750.508, 750.509, 750.519, 750.524, 750.537, 750.538, 750.540e, 750.540f, and 750.561), section 50c as added by 1994 PA 336, section 90c as amended by 2001 PA 1, section 125 as amended by 1999 PA 251, sections 215, 371, 524, 537, and 538 as amended by 1991 PA 145, section 217c as added and section 368 as amended by 1998 PA 360, sections 263 and 264 as amended by 1997 PA 155, section 302 as amended by 1989 PA 85, section 375 as amended by 1996 PA 206, section 411a as amended by 2000 PA 370, section 411d as added by 1980 PA 490, section 502b as amended by 1991 PA 44, section 508 as amended by 1990 PA 77, section 540e as amended by 1988 PA 395, and section 540f as added by 1996 PA 333.

The question being on the passage of the bill,

Senator Dunaskiss offered the following amendments:

1. Amend page 27, following line 22, by inserting:

"Sec. 219a. (1) A person shall not knowingly obtain or attempt to obtain telecommunications service with intent to avoid, attempt to avoid, or cause another person to avoid or attempt to avoid any lawful charge for that telecommunications service by using any of the following:

(a) A telecommunications access device. ~~without the authority or consent of the subscriber or lawful holder of that telecommunications access device.~~

(b) ~~A counterfeit~~ AN UNLAWFUL telecommunications access device.

(c) A fraudulent or deceptive scheme, pretense, method, or conspiracy, or any device or other means, including, but not limited to, any of the following:

(i) Using a false, altered, or stolen identification.

(ii) The use of a telecommunications access device to violate this section by a person other than the subscriber or lawful holder of the telecommunications access device pursuant to UNDER an exchange of anything of value to the subscriber or lawful holder to allow that unlawful use of the telecommunications access device.

~~(d) A telecommunications device or counterfeit telecommunications device.~~

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the total value of the telecommunications service obtained or attempted to be obtained is 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 total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine.

(b) 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 total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or former section 219c or a local ordinance substantially corresponding to this section or former section 219c.

(c) 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 total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$1,000.00 or more but less than \$20,000.00.

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

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

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$20,000.00 or more.

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

(3) The values of telecommunications service obtained or attempted to be obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the telecommunications service obtained or attempted to be obtained.

(4) 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.

(5) 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.

(6) As used in this section:

~~(a) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber.~~

~~(b) "Counterfeit telecommunications device" means a telecommunications device alone or with another telecommunications device that has been altered or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider. Counterfeit telecommunications device includes, but is not limited to, a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.~~

~~(c) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, electronic, magnetic, optical, digital, or analog.~~

~~(d) "Telecommunications access device" means an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device as defined in section 157m that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.~~

~~(e) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications. Telecommunications device includes, but is not limited to, a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.~~

~~(f) "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.~~

(A) "TELECOMMUNICATIONS" AND "TELECOMMUNICATIONS SERVICE" MEAN ANY SERVICE LAWFULLY PROVIDED FOR A CHARGE OR COMPENSATION TO FACILITATE THE ORIGINATION, TRANSMISSION, RETRANSMISSION, EMISSION, OR RECEPTION OF SIGNS, DATA, IMAGES, SIGNALS, WRITINGS, SOUNDS, OR OTHER INTELLIGENCE OR EQUIVALENCE OF INTELLIGENCE OF ANY NATURE OVER ANY TELECOMMUNICATIONS SYSTEM BY ANY METHOD, INCLUDING, BUT NOT LIMITED TO, ELECTRONIC, ELECTROMAGNETIC, MAGNETIC, OPTICAL, PHOTO-OPTICAL, DIGITAL, OR ANALOG TECHNOLOGIES.

(B) "TELECOMMUNICATIONS ACCESS DEVICE" MEANS ANY OF THE FOLLOWING:

(i) ANY INSTRUMENT, DEVICE, CARD, PLATE, CODE, TELEPHONE NUMBER, ACCOUNT NUMBER, PERSONAL IDENTIFICATION NUMBER, ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION NUMBER, COUNTERFEIT NUMBER, OR FINANCIAL TRANSACTION DEVICE AS DEFINED IN SECTION 157M THAT ALONE OR WITH ANOTHER DEVICE CAN ACQUIRE, TRANSMIT, INTERCEPT, PROVIDE, RECEIVE, USE, OR OTHERWISE FACILITATE THE USE, ACQUISITION, INTERCEPTION, PROVISION, RECEPTION, AND TRANSMISSION OF ANY TELECOMMUNICATIONS SERVICE.

(ii) ANY TYPE OF INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE THAT FACILITATES TELECOMMUNICATIONS OR WHICH IS CAPABLE OF TRANSMITTING, ACQUIRING, INTERCEPTING, DECRYPTING, OR RECEIVING ANY TELEPHONIC, ELECTRONIC, DATA, INTERNET ACCESS, AUDIO, VIDEO, MICROWAVE, OR RADIO TRANSMISSIONS, SIGNALS, TELECOMMUNICATIONS, OR SERVICES, INCLUDING THE RECEIPT, ACQUISITION, INTERCEPTION, TRANSMISSION, RETRANSMISSION, OR DECRYPTION OF ALL TELECOMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES PROVIDED BY OR THROUGH ANY CABLE TELEVISION, FIBER OPTIC, TELEPHONE, SATELLITE, MICROWAVE, DATA TRANSMISSION, RADIO, INTERNET BASED OR WIRELESS DISTRIBUTION NETWORK, SYSTEM, OR FACILITY, OR ANY PART, ACCESSORY, OR COMPONENT, INCLUDING ANY COMPUTER CIRCUIT, SECURITY MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, PAGER, CELLULAR TELEPHONE, PERSONAL COMMUNICATIONS DEVICE, TRANSPONDER, RECEIVER, MODEM, ELECTRONIC MECHANISM OR OTHER COMPONENT, ACCESSORY, OR PART OF ANY OTHER DEVICE THAT IS CAPABLE OF FACILITATING THE INTERCEPTION, TRANSMISSION, RETRANSMISSION, DECRYPTION, ACQUISITION, OR RECEPTION OF ANY TELECOMMUNICATIONS, TRANSMISSIONS, SIGNALS, OR SERVICES.

(C) "TELECOMMUNICATIONS SERVICE PROVIDER" MEANS ANY OF THE FOLLOWING:

(i) A PERSON OR ENTITY PROVIDING A TELECOMMUNICATIONS SERVICE, WHETHER DIRECTLY OR INDIRECTLY AS A RESELLER, INCLUDING, BUT NOT LIMITED TO, A CELLULAR, PAGING, OR OTHER WIRELESS COMMUNICATIONS COMPANY OR OTHER PERSON OR ENTITY WHICH, FOR A FEE, SUPPLIES THE FACILITY, CELL SITE, MOBILE TELEPHONE SWITCHING OFFICE, OR OTHER EQUIPMENT OR TELECOMMUNICATIONS SERVICE.

(ii) A PERSON OR ENTITY OWNING OR OPERATING ANY FIBER OPTIC, CABLE TELEVISION, SATELLITE, INTERNET BASED, TELEPHONE, WIRELESS, MICROWAVE, DATA TRANSMISSION OR RADIO DISTRIBUTION SYSTEM, NETWORK, OR FACILITY.

(iii) A PERSON OR ENTITY PROVIDING ANY TELECOMMUNICATIONS SERVICE DIRECTLY OR INDIRECTLY BY OR THROUGH ANY DISTRIBUTION SYSTEMS, NETWORKS, OR FACILITIES.

(D) "TELECOMMUNICATIONS SYSTEM" MEANS ANY SYSTEM, NETWORK, OR FACILITY OWNED OR OPERATED BY A TELECOMMUNICATIONS SERVICE PROVIDER, INCLUDING ANY RADIO, TELEPHONE, FIBER OPTIC, CABLE TELEVISION, SATELLITE, MICROWAVE, DATA TRANSMISSION, WIRELESS, OR INTERNET BASED SYSTEM, NETWORK, OR FACILITY.

(E) "UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE" MEANS ANY OF THE FOLLOWING:

(i) A TELECOMMUNICATIONS ACCESS DEVICE THAT IS FALSE, FRAUDULENT, UNLAWFUL, NOT ISSUED TO A LEGITIMATE TELECOMMUNICATIONS ACCESS DEVICE SUBSCRIBER ACCOUNT, OR OTHERWISE INVALID OR THAT IS EXPIRED, SUSPENDED, REVOKED, CANCELED, OR OTHERWISE TERMINATED IF NOTICE OF THE EXPIRATION, SUSPENSION, REVOCATION, CANCELLATION, OR TERMINATION HAS BEEN SENT TO THE TELECOMMUNICATIONS ACCESS DEVICE SUBSCRIBER.

(ii) ANY PHONES ALTERED TO OBTAIN SERVICE WITHOUT THE EXPRESS AUTHORITY OR ACTUAL CONSENT OF THE TELECOMMUNICATIONS SERVICE PROVIDER, A CLONE TELEPHONE, CLONE MICROCHIP, TUMBLER TELEPHONE, TUMBLER MICROCHIP, OR WIRELESS SCANNING DEVICE CAPABLE OF ACQUIRING, INTERCEPTING, RECEIVING, OR OTHERWISE FACILITATING THE USE, ACQUISITION, INTERCEPTION, OR RECEIPT OF A TELECOMMUNICATIONS SERVICE WITHOUT THE EXPRESS AUTHORITY OR ACTUAL CONSENT OF THE TELECOMMUNICATIONS SERVICE PROVIDER.

(iii) ANY TELECOMMUNICATIONS ACCESS DEVICE THAT HAS BEEN MANUFACTURED, ASSEMBLED, ALTERED, DESIGNED, MODIFIED, PROGRAMMED, OR REPROGRAMMED, ALONE OR IN CONJUNCTION WITH ANOTHER DEVICE, SO AS TO BE CAPABLE OF FACILITATING THE DISRUPTION, ACQUISITION, INTERCEPTION, RECEIPT, TRANSMISSION, RETRANSMISSION, OR DECRYPTION OF A TELECOMMUNICATIONS SERVICE WITHOUT THE ACTUAL CONSENT OR EXPRESS AUTHORIZATION OF THE TELECOMMUNICATIONS SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO, ANY DEVICE, TECHNOLOGY, PRODUCT, SERVICE, EQUIPMENT, COMPUTER SOFTWARE, OR COMPONENT OR PART, PRIMARILY DISTRIBUTED, SOLD, DESIGNED, ASSEMBLED, MANUFACTURED, MODIFIED, PROGRAMMED, REPROGRAMMED, OR USED FOR THE PURPOSE OF PROVIDING THE UNAUTHORIZED RECEIPT OF, TRANSMISSION OF, INTERCEPTION OF, DISRUPTION OF, DECRYPTION OF, ACCESS TO, OR ACQUISITION OF ANY TELECOMMUNICATIONS SERVICE PROVIDED BY ANY TELECOMMUNICATIONS SERVICE PROVIDER.

(iv) ANY TYPE OF INSTRUMENT, DEVICE, MACHINE, EQUIPMENT, TECHNOLOGY, OR SOFTWARE THAT IS PRIMARILY DESIGNED, ASSEMBLED, DEVELOPED, MANUFACTURED, SOLD, DISTRIBUTED, POSSESSED, USED, OR OFFERED, PROMOTED, OR ADVERTISED, FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING ANY TECHNOLOGY, DEVICE, OR SOFTWARE, OR ANY COMPONENT OR PART, USED BY THE PROVIDER, OWNER, OR LICENSEE OF ANY TELECOMMUNICATIONS SERVICE OR OF ANY DATA, AUDIO, OR VIDEO PROGRAMS OR TRANSMISSIONS, TO PROTECT ANY SUCH TELECOMMUNICATIONS, DATA, AUDIO, OR VIDEO SERVICES, PROGRAMS, OR TRANSMISSIONS FROM UNAUTHORIZED RECEIPT, ACQUISITION, INTERCEPTION, ACCESS, DECRYPTION, DISCLOSURE, COMMUNICATION, TRANSMISSION, OR RETRANSMISSION.

(F) ~~(G)~~ "Value of the telecommunications service obtained or attempted to be obtained" includes, but is not limited to, all of the following:

(i) Any lawful charge for telecommunications services avoided or attempted to be avoided.

(ii) The value of any other money, property, or telecommunications service lost, stolen, or rendered unrecoverable by the violation.

(iii) Any actual expenditure incurred by the victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, disrupted, destroyed, or stolen as a result of the violation.

(iv) THE VALUE OF ALL TELECOMMUNICATIONS SERVICES AVAILABLE TO THE VIOLATOR AND OTHERS AS A RESULT OF THE VIOLATION."

2. Amend page 64, line 3, by striking out all of section 540f and inserting:

"Sec. 540c. (1) A person shall not ASSEMBLE, DEVELOP, manufacture, possess, deliver, offer to deliver, or advertise ~~a counterfeit~~ AN UNLAWFUL telecommunications ACCESS device or ASSEMBLE, DEVELOP, manufacture, possess, deliver, offer to deliver, or advertise a telecommunications device intending to use ~~the telecommunications device or~~ THOSE DEVICES OR TO allow the ~~telecommunications device~~ DEVICES to be used to do any of the following or knowing or having reason to know that the ~~telecommunications device is~~ DEVICES ARE intended to be used to do any of the following:

(a) Obtain or attempt to obtain A telecommunications service with the intent to avoid or aid or abet or cause another person to avoid any lawful charge for THE telecommunications service in violation of section 219a.

(b) Conceal the existence or place of origin or destination of any telecommunications service.

(C) TO RECEIVE, DISRUPT, DECRYPT, TRANSMIT, RETRANSMIT, ACQUIRE, INTERCEPT, OR FACILITATE THE RECEIPT, DISRUPTION, DECRYPTION, TRANSMISSION, RETRANSMISSION, ACQUISITION, OR INTERCEPTION OF ANY TELECOMMUNICATIONS SERVICE WITHOUT THE EXPRESS AUTHORITY OR ACTUAL CONSENT OF THE TELECOMMUNICATIONS SERVICE PROVIDER.

(2) A PERSON SHALL NOT MODIFY, ALTER, PROGRAM, OR REPROGRAM A TELECOMMUNICATIONS ACCESS DEVICE FOR THE PURPOSES DESCRIBED IN SUBSECTION (1).



(3) ~~(2)~~ A person shall not deliver, offer to deliver, or advertise plans, written instructions, or materials for THE manufacture, ASSEMBLY, OR DEVELOPMENT of a ~~counterfeit~~ AN UNLAWFUL telecommunications ACCESS device or for THE manufacture, ASSEMBLY, OR DEVELOPMENT of a telecommunications ACCESS device that the person intends to be used or knows or has reason to know will be used or is likely to be used to violate subsection (1). AS USED IN THIS SUBSECTION, "MATERIALS" INCLUDES ANY HARDWARE, CABLES, TOOLS, DATA, COMPUTER SOFTWARE, OR OTHER INFORMATION OR EQUIPMENT USED OR INTENDED FOR USE IN THE MANUFACTURE, ASSEMBLY, OR DEVELOPMENT OF AN UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE OR A TELECOMMUNICATIONS ACCESS DEVICE.

(4) ~~(3)~~ A person who violates subsection (1) ~~or~~ (2), OR (3) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both. ALL FINES SHALL BE IMPOSED FOR EACH UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE OR TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE OFFENSE. EACH UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE OR TELECOMMUNICATIONS ACCESS DEVICE IS CONSIDERED A SEPARATE VIOLATION.

(5) ~~(4)~~ This section does not prohibit or restrict the possession of radio receivers or transceivers by licensees of the federal communications commission in the amateur radio service that are intended primarily or exclusively for use in the amateur radio service.

(6) ~~(5)~~ A ~~counterfeit~~ ANY UNLAWFUL telecommunications ACCESS device used INVOLVED in violation of this section is subject to forfeiture in the same manner as provided in sections 4701 to 4709 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.4701 to 600.4709 of the Michigan Compiled Laws 1961 PA 236, MCL 600.4701 TO 600.4709, and the court may order either of the following:

(a) The ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device be destroyed OR RETAINED AS PROVIDED UNDER SECTION 540D.

(b) The ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device be returned to the telecommunications service provider if the device is owned or controlled by the provider OR DISPOSED OF AS PROVIDED UNDER SECTION 540D.

(7) THE COURT SHALL ORDER A PERSON CONVICTED OF VIOLATING SUBSECTION (1), (2), OR (3) TO MAKE RESTITUTION IN ACCORDANCE WITH SECTION 1A OF THE CODE OF CRIMINAL PROCEDURE, 1972 PA 175, MCL 769.1A.

(8) A VIOLATION OF SUBSECTION (1), (2), OR (3) IS CONSIDERED TO HAVE OCCURRED AT THE PLACE WHERE THE PERSON MANUFACTURES, ASSEMBLES, DEVELOPS, OR DESIGNS AN UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE OR TELECOMMUNICATIONS ACCESS DEVICE, OR THE PLACES WHERE THE UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE OR TELECOMMUNICATIONS ACCESS DEVICE IS SOLD OR DELIVERED TO ANOTHER PERSON.

(9) ~~(6)~~ As used in this section and sections 540d, 540f, and 540g:

~~(a) "Counterfeit telecommunications device" means a telecommunications device alone or with another telecommunications device that has been altered or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider. Counterfeit telecommunications device includes but is not limited to a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.~~

~~(A) ~~(b)~~ "Deliver" means to actually or constructively sell, give, loan, LEASE, or otherwise transfer a telecommunications ACCESS device, ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device, AND plans, written instructions, or materials CONCERNING THE DEVICES to another person.~~

~~(c) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method including but not limited to electronic, magnetic, optical, digital, or analog.~~

~~(d) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications. Telecommunications device includes but is not limited to a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem or device that enables use of a modem, cables, converters, decoders, descramblers, satellite equipment, or other devices and equipment.~~

~~(e) "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.~~

~~(f) "Unauthorized receipt of a telecommunications service" means the interception or receipt by any means of a telecommunications service without the specific authorization of the telecommunications service provider.~~

(B) "TELECOMMUNICATIONS ACCESS DEVICE" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

(C) "TELECOMMUNICATIONS SERVICE" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

(D) "TELECOMMUNICATIONS SERVICE PROVIDER" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

(E) "TELECOMMUNICATIONS SYSTEM" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

(F) "UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

Sec. 540d. Any telecommunications ACCESS device, ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device, plans, instructions, or materials described in section 540c may be seized under warrant or incident to a lawful arrest. Upon conviction of a person for violation of section 540c, all of the following apply to the telecommunications device, counterfeit telecommunications device, plans, instructions, or materials involved in the violation that are seized under this section:

(a) The telecommunications ACCESS device or materials shall be returned to the lawful owner of that device or materials unless he or she was convicted of the violation or had prior actual knowledge of and consented to the violation or unless the lawful owner cannot be determined or located.

(b) The ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device, plans, or instructions and any telecommunications ACCESS device or materials not required to be returned to the lawful owner under subdivision (a) may be destroyed as contraband by the seizing law enforcement agency or retained and used by the seizing law enforcement agency for law enforcement purposes.

(c) Any telecommunications ACCESS device or materials not required to be returned to the lawful owner under subdivision (a) may be turned over by the seizing law enforcement agency to the telecommunications service provider in the territory in which the seizure occurred.

Sec. 540f. (1) Except as provided in subsection (2), a person who knowingly or intentionally publishes a telecommunications access device or ~~counterfeit~~ UNLAWFUL telecommunications access device with the intent that it be used or knowing or having reason to know that it will be used or is likely to be used to violate section 219a is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than ~~\$100.00~~ \$500.00, or both.

(2) A person who violates subsection (1) and has a previous conviction for a violation of section 219a or 540c or former section 219c is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both. FOR PURPOSES OF IMPOSING FINES UNDER THIS SECTION FOR A REPEAT OFFENDER, THE FINES SHALL BE IMPOSED FOR EACH TELECOMMUNICATIONS ACCESS DEVICE AND UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE VIOLATION.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having a prior conviction, the prosecuting attorney shall include on the complaint and information a statement listing that prior conviction. The existence of the defendant's prior conviction shall be determined by the court, without a jury, at 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.

(4) As used in this section:

(a) ~~"Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber.~~

(A) ~~(b)~~ "Publish" means to communicate information or make information available to 1 or more persons orally, in writing, or by means of any telecommunications. Publish includes but is not limited to communicating information on a computer bulletin board or similar system.

(B) ~~(c)~~ "Telecommunications access device" means an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device as defined in section 157m that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, ~~counterfeit telecommunications device, or telecommunications service~~ SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

(C) "UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE" SHALL HAVE THE SAME MEANING AS IN SECTION 219A.

Sec. 540g. (1) An officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider who knowingly and without authority uses or diverts telecommunications services for his or her own benefit or to the benefit of another person is guilty of a crime as follows:

(a) If the total value of the telecommunications service used or diverted is 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 total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine.

(b) 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 total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) 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.

(c) 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 total value of the telecommunications service used or diverted, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service used or diverted is \$1,000.00 or more but less than \$20,000.00.

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

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

(i) The total value of the telecommunications service used or diverted is \$20,000.00 or more.

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

(2) The values of telecommunications service used or diverted in separate incidents ~~pursuant to~~ UNDER a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the telecommunications service used or diverted. THE COURTS SHALL ALSO INCLUDE THE VALUE OF ALL TELECOMMUNICATIONS SERVICES MADE AVAILABLE TO THE VIOLATOR AND OTHERS AS A RESULT OF THE VIOLATION.

(3) 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.

(4) 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 UNDER section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 540h. (1) Evidence of 1 or more of the following facts shall give rise to a rebuttable presumption that the conduct that violated section 540c was engaged in knowingly by the defendant with the intent to permit or obtain the unauthorized receipt, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION of a telecommunications service:

(a) The presence on the defendant's property or in the actual possession of the defendant of 1 or more ~~counterfeit~~ UNLAWFUL telecommunications ACCESS devices.

(b) The defendant installed an unauthorized connection or provided written instructions on such connection to another. An unauthorized connection does not include any of the following:

(i) An internal connection made by a person within his or her residence for the purpose of receiving AN authorized ~~cable or satellite television~~ TELECOMMUNICATIONS service.

(ii) The physical connection of a cable or other device by a person located within his or her residence which was initially placed there by the ~~cable or satellite television~~ TELECOMMUNICATIONS service provider.

(iii) The physical connection of a cable or other device by a person located within his or her residence which the person had reason to believe was an authorized connection.

(c) The telecommunications service provider placed written warning labels on its telecommunications ACCESS devices explaining that tampering with a telecommunications device is a violation of law and a telecommunications device in the defendant's possession has been tampered with, altered, or modified to permit the unauthorized receipt, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION of a telecommunications service.

(d) The defendant has published or advertised for sale a plan for a ~~counterfeit~~ UNLAWFUL telecommunications ACCESS device and the publication or advertisement states or implies that the plan will enable the unauthorized receipt, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION of a telecommunications service.

(e) The defendant has advertised for the sale of a counterfeit UNLAWFUL telecommunications ACCESS device or kit for a counterfeit UNLAWFUL telecommunications ACCESS device and the advertisement states or implies that the counterfeit UNLAWFUL telecommunications ACCESS device or kit will permit the unauthorized receipt, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION of a telecommunications service.

(f) The defendant has sold, leased, or offered for sale or lease a counterfeit UNLAWFUL telecommunications ACCESS device, plan, or kit for a counterfeit UNLAWFUL telecommunications ACCESS device and during the course of the transaction for sale or lease, the defendant stated or implied to the buyer that the counterfeit UNLAWFUL telecommunications ACCESS device will permit the unauthorized receipt, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION of a telecommunications service.

(G) AS USED IN THIS SECTION, "UNAUTHORIZED RECEIPT, ACQUISITION, INTERCEPTION, DISRUPTION, DECRYPTION, TRANSMISSION, OR RETRANSMISSION OF A TELECOMMUNICATIONS SERVICE" MEANS TO DO ANY OF THOSE ACTS WITHOUT THE EXPRESS AUTHORITY OF THE TELECOMMUNICATIONS SERVICE PROVIDER."

The amendments were adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 979**

**Yeas—34**

Bennett	Emmons	Leland	Schwarz
Bullard	Garcia	McCotter	Scott
Byrum	Gast	McManus	Shugars
Cherry	Goschka	Miller	Sikkema
DeBeaussaert	Hammerstrom	North	Smith
DeGrow	Hart	Peters	Stille
Dingell	Hoffman	Sanborn	Van Regenmorter
Dunaskiss	Johnson	Schuette	Young
Emerson	Koivisto		

**Nays—0**

**Excused—4**

Gougeon	Murphy	Steil	Vaughn
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**Not Voting—0**

In The Chair: Schwarz

Senator Dunaskiss offered to amend the title to read as follows:

A bill 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 16, 25, 33, 34, 44, 45, 50c, 57, 60, 64, 90c, 113, 114, 123, 125, 138, 140, 149, 150, 151, 153, 172, 173, 183, 184, 191, 192, 197a, 215, 217, 217c, 219, 219a, 220, 240, 263, 264, 287, 288, 294, 295, 298, 301, 302, 304, 305, 306, 314, 330, 331, 335, 335a, 354, 359, 368, 371, 375, 389, 393, 396, 404, 407, 408, 410, 411a, 411d, 414, 428, 429, 430, 454, 466, 478, 482, 490a, 492, 502b, 508, 509, 519, 524, 537, 538, 540c, 540d, 540f, 540g, 540h, and 561 (MCL 750.16, 750.25, 750.33, 750.34, 750.44, 750.45, 750.50c, 750.57, 750.60, 750.64, 750.90c, 750.113, 750.114, 750.123, 750.125, 750.138, 750.140, 750.149, 750.150, 750.151, 750.153,

750.172, 750.173, 750.183, 750.184, 750.191, 750.192, 750.197a, 750.215, 750.217, 750.217c, 750.219, 750.219a, 750.220, 750.240, 750.263, 750.264, 750.287, 750.288, 750.294, 750.295, 750.298, 750.301, 750.302, 750.304, 750.305, 750.306, 750.314, 750.330, 750.331, 750.335, 750.335a, 750.354, 750.359, 750.368, 750.371, 750.375, 750.389, 750.393, 750.396, 750.404, 750.407, 750.408, 750.410, 750.411a, 750.411d, 750.414, 750.428, 750.429, 750.430, 750.454, 750.466, 750.478, 750.482, 750.490a, 750.492, 750.502b, 750.508, 750.509, 750.519, 750.524, 750.537, 750.538, 750.540c, 750.540d, 750.540f, 750.540g, 750.540h, and 750.561), section 50c as added by 1994 PA 336, section 90c as amended by 2001 PA 1, section 125 as amended by 1999 PA 251, sections 215, 371, 524, 537, and 538 as amended by 1991 PA 145, section 217c as added and section 368 as amended by 1998 PA 360, section 219a as amended by 1998 PA 312, sections 263 and 264 as amended by 1997 PA 155, section 302 as amended by 1989 PA 85, section 375 as amended by 1996 PA 206, section 411a as amended by 2000 PA 370, section 411d as added by 1980 PA 490, section 502b as amended by 1991 PA 44, section 508 as amended by 1990 PA 77, section 540c as amended and section 540h as added by 1996 PA 557, section 540d as amended by 1996 PA 329, section 540f as added by 1996 PA 333, and section 540g as amended by 1998 PA 311.

The amendment to the title was adopted.

The Senate agreed to the title as amended.

Senator Emmons moved that the following bill be given immediate effect:

**House Bill No. 5364**

The motion prevailed, 2/3 of the members serving voting therefor.

The following bill was read a third time:

**House Bill No. 6447, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 8001, 8003, 8005, and 8011 (MCL 600.8001, 600.8003, 600.8005, and 600.8011), as added by 2001 PA 262.

The question being on the passage of the bill,

Senators Dunaskiss and Byrum offered the following amendment:

1. Amend page 1, following "THE PEOPLE OF THE STATE OF MICHIGAN ENACT:" by inserting:

"SEC. 2962A. (1) AS USED IN THIS SECTION:

(A) "TELECOMMUNICATIONS SERVICE" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(B) "TELECOMMUNICATIONS SERVICE PROVIDER" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(C) "TELECOMMUNICATIONS SYSTEM" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(D) "UNAUTHORIZED CONNECTION" MEANS ANY PHYSICAL, ELECTRICAL, MECHANICAL, ACOUSTICAL, OR OTHER CONNECTION TO A TELECOMMUNICATIONS SYSTEM, WITHOUT THE SPECIFIC AUTHORITY OF THE TELECOMMUNICATIONS SERVICE PROVIDER. AN UNAUTHORIZED CONNECTION DOES NOT INCLUDE ANY OF THE FOLLOWING:

(i) AN INTERNAL CONNECTION MADE BY A PERSON WITHIN HIS OR HER RESIDENCE FOR THE PURPOSE OF RECEIVING AUTHORIZED TELECOMMUNICATIONS SERVICE.

(ii) THE PHYSICAL CONNECTION OF A CABLE OR OTHER DEVICE BY A PERSON LOCATED WITHIN HIS OR HER RESIDENCE WHICH WAS INITIALLY PLACED THERE BY THE TELECOMMUNICATIONS SERVICE PROVIDER.

(iii) THE PHYSICAL CONNECTION OF A CABLE OR OTHER DEVICE BY A PERSON LOCATED WITHIN HIS OR HER RESIDENCE WHICH THE PERSON HAD REASON TO BELIEVE WAS AN AUTHORIZED CONNECTION.

(E) "UNAUTHORIZED RECEIPT OF TELECOMMUNICATIONS SERVICE" MEANS THE INTERCEPTION OR RECEIPT BY ANY MEANS OF A TELECOMMUNICATIONS SERVICE OVER A TELECOMMUNICATIONS SYSTEM WITHOUT THE SPECIFIC AUTHORIZATION OF THE TELECOMMUNICATIONS SERVICE PROVIDER.

(F) "UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE" MEANS THAT TERM AS DEFINED IN SECTION 219A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A.

(2) A TELECOMMUNICATIONS SERVICE PROVIDER MAY BRING AN ACTION TO ENJOIN A PERSON FROM THE UNAUTHORIZED RECEIPT OF ANY TELECOMMUNICATIONS SERVICE, USING AN UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE, OR THE MAKING OF AN UNAUTHORIZED CONNECTION, AND MAY SEEK 1 OR MORE OF THE FOLLOWING DAMAGES:

(A) ACTUAL DAMAGES.

(B) EXEMPLARY DAMAGES OF NOT MORE THAN \$1,000.00.

(C) IF THE PERSON'S ACTS WERE FOR DIRECT OR INDIRECT COMMERCIAL ADVANTAGE OR FINANCIAL GAIN, EXEMPLARY DAMAGES OF NOT MORE THAN \$50,000.00.

(D) REASONABLE ATTORNEY FEES AND COSTS.

(3) A PERSON INJURED BY A VIOLATION OF SECTIONS 219A, 540C, AND 540G OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.219A, 750.540C, AND 750.540G, MAY BRING A CIVIL ACTION IN ANY COURT OF COMPETENT JURISDICTION. THE COURT MAY DO ANY OF THE FOLLOWING:

(A) GRANT PRELIMINARY AND FINAL INJUNCTIONS TO PREVENT OR RESTRAIN THE VIOLATIONS.

(B) AT ANY TIME WHILE AN ACTION IS PENDING, ORDER THE IMPOUNDING, ON TERMS AS THE COURT CONSIDERS REASONABLE, OF ANY TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE THAT IS IN THE CUSTODY OR CONTROL OF THE ALLEGED VIOLATOR AND THAT THE COURT HAS REASONABLE CAUSE TO BELIEVE WAS INVOLVED IN THE ALLEGED VIOLATION.

(C) AWARD DAMAGES AS PROVIDED UNDER SUBDIVISION (F).

(D) IN ITS DISCRETION, AWARD REASONABLE ATTORNEY FEES AND COSTS, INCLUDING, BUT NOT LIMITED TO, COSTS FOR INVESTIGATION, TESTING, AND EXPERT WITNESS FEES.

(E) AS PART OF A FINAL JUDGMENT OR DECREE FINDING A VIOLATION, ORDER THE MODIFICATION OR DESTRUCTION OF ANY TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE VIOLATION.

(F) AWARD DAMAGES COMPUTED AS 1 OF THE FOLLOWING UPON THE ELECTION OF THE COMPLAINING PARTY AT ANY TIME BEFORE FINAL JUDGMENT:

(i) THE ACTUAL DAMAGES SUFFERED BY THE COMPLAINING PARTY AS A RESULT OF THE VIOLATION OF THIS SECTION AND ANY PROFITS OF THE VIOLATOR THAT ARE ATTRIBUTABLE TO THE VIOLATION AND ARE NOT TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES. IN DETERMINING THE VIOLATOR'S PROFITS, THE COMPLAINING PARTY SHALL BE REQUIRED TO PROVE ONLY THE VIOLATOR'S GROSS REVENUE, AND THE VIOLATOR SHALL BE REQUIRED TO PROVE ANY DEDUCTIBLE EXPENSES AND THE ELEMENTS OF PROFIT ATTRIBUTABLE TO FACTORS OTHER THAN THE VIOLATION.

(ii) DAMAGES OF BETWEEN \$250.00 TO \$10,000.00 FOR EACH TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE ACTION, WITH THE AMOUNT OF THE DAMAGES TO BE DETERMINED BY THE COURT. WHERE THE COURT FINDS THAT THE VIOLATION OF THIS SECTION WAS COMMITTED WILLFULLY AND FOR COMMERCIAL ADVANTAGE OR FINANCIAL GAIN, THE COURT MAY INCREASE THE AWARD OF DAMAGES BY AN AMOUNT OF NOT MORE THAN \$50,000.00 FOR EACH TELECOMMUNICATIONS ACCESS DEVICE OR UNLAWFUL TELECOMMUNICATIONS ACCESS DEVICE INVOLVED IN THE ACTION.

(4) IT IS NOT A NECESSARY PREREQUISITE TO BRING AN ACTION UNDER THIS SECTION THAT THE TELECOMMUNICATIONS SERVICE PROVIDER OR OTHER INJURED PARTY HAS SUFFERED ACTUAL DAMAGES OR THAT THE DEFENDANT HAS BEEN CONVICTED OF ANY VIOLATIONS OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.1 TO 750.568.

(5) AN ACTION UNDER THIS SECTION IS IN ADDITION TO ANY OTHER PENALTIES OR REMEDIES PROVIDED BY LAW.

(6) EACH ACT PROHIBITED BY THIS SECTION IS A SEPARATE CAUSE OF ACTION."

The amendment was adopted, a majority of the members serving voting therefor.

The question being on the passage of the bill,

The bill was passed, a majority of the members serving voting therefor, as follows:

**Roll Call No. 980**

**Yeas—34**

Bennett	Emmons	Leland	Schwarz
Bullard	Garcia	McCotter	Scott
Byrum	Gast	McManus	Shugars
Cherry	Goschka	Miller	Sikkema
DeBeaussaert	Hammerstrom	North	Smith
DeGrow	Hart	Peters	Stille
Dingell	Hoffman	Sanborn	Van Regenmorter
Dunaskiss	Johnson	Schuette	Young
Emerson	Koivisto		

**Nays—0**

**Excused—4**

Gougeon

Murphy

Steil

Vaughn

**Not Voting—0**

In The Chair: Schwarz

The question being on concurring in the committee recommendation to give the bill immediate effect, The recommendation was concurred in, 2/3 of the members serving voting therefor.

Senator Dunaskiss offered to amend the title to read as follows:

A bill to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 8001, 8003, 8005, and 8011 (MCL 600.8001, 600.8003, 600.8005, and 600.8011), as added by 2001 PA 262, and by adding section 2962a.

The amendment to the title was adopted.

The Senate agreed to the title as amended.

By unanimous consent the Senate returned to the order of

**General Orders**

Senator Emmons moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President pro tempore, Senator Schwarz, designated Senator Goschka as Chairperson.

After some time spent therein, the Committee arose; and, the President pro tempore, Senator Schwarz, having resumed the Chair, the Committee reported back to the Senate, favorably and without amendment, the following bill:

**House Bill No. 5641, entitled**

A bill to regulate the business of deferred presentment services; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

The bill was placed on the order of Third Reading of Bills.

By unanimous consent the Senate returned to the order of

**Motions and Communications**

The following communication was received and read:  
Office of the Senate Majority Leader

December 11, 2002

Pursuant to Senate Rule 1.105, I hereby appoint the following members to the following conference committee:

SB 380                      Senator Bullard  
                                  Senator Van Regenmorter  
                                  Senator Peters

Sincerely,  
Dan L. DeGrow  
Senate Majority Leader

The communication was referred to the Secretary for record.

By unanimous consent the Senate returned to the order of  
**Messages from the House**

**Senate Bill No. 380, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9948) by adding sections 2973 and 2974.

The House of Representatives has appointed Reps. Allen, Bisbee and Rivet as conferees to join with Senators Bullard, Van Regenmorter and Peters.

The bill was referred to the Conference Committee.

**Committee Reports**

The Committee on Judiciary reported

**House Bill No. 4092, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 8122 (MCL 600.8122), as amended by 1988 PA 135, and by adding section 9938a.

With the recommendation that the bill then pass.

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
 Chairperson

To Report Out:

Yeas: Senators Van Regenmorter, Bullard, Schuette, Peters, Dingell and Scott

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Judiciary reported

**House Bill No. 5977, entitled**

A bill to improve the training and education of local correction officers; to provide for the certification of local corrections officers and the developments of standards and requirements for local corrections officers; to provide for the creation of a sheriffs coordinating and training office and a local correction advisory board; and to prescribe the powers and duties of certain local and state officers and agencies.

With the recommendation that the bill then pass.

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
 Chairperson

To Report Out:

Yeas: Senators Van Regenmorter, McCotter, Bullard, Schuette, Peters, Dingell and Scott

Nays: None

The bill was referred to the Committee of the Whole.

The Committee on Judiciary reported

**House Bill No. 6498, entitled**

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 504, 517, and 803 (MCL 600.504, 600.517, and 600.803), section 504 as amended by 2001 PA 254, section 517 as amended by 2001 PA 257, and section 803 as amended by 2001 PA 253.

With the recommendation that the following amendment be adopted and that the bill then pass:

1. Amend page 4, following line 15, by inserting:

"Sec. 810a. The probate judges in the counties of Arenac, Kalkaska, ~~and~~ Crawford, AND LAKE have the power, authority, and title of a district judge within their respective counties, in addition to the power, authority, and title of a probate judge.

Enacting section 1. Section 810a of the revised judicature act of 1961, 1961 PA 236, MCL 600.810a, as amended by this amendatory act, takes effect 91 days after the date on which the 91st Legislature adjourns its 2002 regular session sine die."

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
 Chairperson



**To Report Out:**

Yeas: Senators Van Regenmorter, McCotter, Bullard and Schuette

Nays: Senators Peters, Dingell and Scott

The bill and the amendment recommended by the committee were referred to the Committee of the Whole.

**COMMITTEE ATTENDANCE REPORT**

The Committee on Judiciary submitted the following:

Meeting held on Tuesday, December 10, 2002, at 1:00 p.m, Rooms 402 and 403, Capitol Building

Present: Senators Van Regenmorter (C), McCotter, Bullard, Schuette, Peters, Dingell and Scott

**Scheduled Meetings**

**Appropriations** - Thursday, December 12, 9:00 a.m., Senate Appropriations Room, 3rd Floor, Capitol Building (373-6960)

**Conference Committees -**

**Supplemental Appropriations (HB 5705)** - Thursday, December 12, 8:30 a.m., House Appropriations Room, 3rd Floor, Capitol Building (373-8080)

**Torts; Limitations on Liability of Private Facilities (SB 380)** - Thursday, December 12, 9:30 a.m., Rooms 402 and 403, Capitol Building (373-5103)

Senator Emmons moved that the Senate adjourn.

The motion prevailed, the time being 5:38 p.m.

The President pro tempore, Senator Schwarz, declared the Senate adjourned until Thursday, December 12, at 10:00 a.m.

CAROL MOREY VIVENTI  
Secretary of the Senate.

